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No. 88-1291

FILED
MAR 4 1989
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1988

WILLIAM F. GREGORY, MICHAEL C. SULLIVAN
and SULLIVAN-GREGORY, INC.,
a Michigan corporation,

Petitioners,

-vs-

POPEYES FAMOUS FRIED CHICKEN & BISCUITS, INC.,
a Louisiana corporation,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO REVIEW JUDGMENT OF THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

– AND APPENDICES –

SOTIROFF ABRAMCZYK & RAUSS, P.C.
By: LAWRENCE R. ABRAMCZYK
Counsel of Record
Attorney for Respondent
30400 Telegraph Road, Suite 444
Birmingham, Michigan 48010
(313) 642-6000

Interstate Brief & Record Company, *a division of* North American Graphics, Inc.
1629 West Lafayette Boulevard, Detroit, MI 48216 (313) 962-6230

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COUNTER-STATEMENT OF QUESTION PRESENTED

Is there any special or important reason for this case to merit consideration by the United States Supreme Court?

COUNTER-STATEMENT OF CONSTITUTIONAL PROVISION INVOLVED

This diversity-of-citizenship case is, exclusively, a contract dispute, governed by state law. Thus far in the history of these proceedings, there has been no constitutional provision involved. No constitutional issues were briefed or argued in either the District Court or the Court of Appeals. None were addressed by either court, *sua sponte*. Petitioners now maintain, in retrospect, that their constitutional due-process rights have been violated.

DESIGNATION OF CORPORATE RELATIONSHIPS

Respondent is Popeyes Famous Fried Chicken & Biscuits, Inc., (now known as "Popeyes, Inc.") a Louisiana corporation. Popeyes, Inc. is a subsidiary of A. Copeland Enterprises, Inc., a Louisiana corporation.

Other subsidiaries of A. Copeland Enterprises, Inc., include Popeyes Famous Fried Chicken Advertising Fund, a Division of Popeyes, Inc., a Louisiana corporation; Copeland's Cajun Princess, Inc., a Florida corporation; Popeyes, B.V., incorporated in Amsterdam; Popeyes (Canada), Inc., a Canadian corporation; and National Development Corporation, a Louisiana corporation.

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COUNTER-STATEMENT OF THE CASE[1]

1.

BACKGROUND

Petitioners herein are Michael C. Sullivan ("Sullivan"), William F. Gregory ("Gregory") and Sullivan-Gregory, Inc., a Michigan corporation, the stock of which is

[1] Several statements in Petitioners' "Statement of the Case" are inaccurate and misleading. Rather than address these disputed items on a sentence-by-sentence basis, Respondent has prepared the instant counter-statement of the case.

owned by Sullivan and Gregory. Respondent is Popeyes Famous Fried Chicken & Biscuits, Inc. (now known as "Popeyes, Inc."), a Louisiana corporation ("Popeyes").

Respondent owns proprietary rights in a restaurant system known as "Popeyes Famous Fried Chicken & Biscuits", which was, as of the time of trial of this cause, franchised to approximately 670 restaurant operators in the United States.

Sullivan-Gregory, Inc. executed six (6) identical-in-content franchise agreements for the operation of six (6) franchised Popeyes' restaurants in the State of Michigan. Sullivan and Gregory personally guaranteed the performance of Sullivan-Gregory, Inc.'s obligations under said agreements.

Sullivan-Gregory, Inc. opened its first Popeyes' restaurant in 1979 and, as of 1983, was operating six restaurants employing the Popeyes' franchise system. Sullivan-Gregory, Inc. continued utilizing its Popeyes' franchise rights at the restaurants through the time of trial, with the exception of one restaurant closed in late 1985.

Although employing the Popeyes' system (*i.e.*, utilization of Popeyes' trademark, trade name, operating manuals, food-preparation techniques, food formulas, packaging, menu board, etc.) throughout the period of operation of the stores and receiving ongoing operational support and assistance from Respondent, Sullivan-Gregory, Inc. failed to pay to Respondent franchise royalties and advertising, fees consisting of five percent of weekly gross sales and three percent of weekly gross sales, respectively, as required by the franchise agreements.

On March 28, 1985, Petitioners filed a complaint against Respondent in United States District Court for the Eastern District of Michigan, invoking jurisdiction

pursuant to 28 U.S.C. § 1332. Petitioners alleged Respondent had breached the advertising-fee provisions of the franchise agreements "by failing to provide adequate advertising or promotion". Complaint, Count I, ¶ 15 (Appendix A, page A-3).[2]

On May 22, 1985, Respondent counterclaimed against Petitioners, jointly and severally, alleging Petitioners' breach of contract by virtue of Petitioners' failure to pay the franchise royalties and advertising fees required by the franchise agreements. Specifically, Respondent alleged Petitioner Sullivan-Gregory, Inc. had continuously operated the six restaurants as Popeyes franchised restaurants during the delinquency periods, had failed to pay the referenced royalties and fees during said periods, had failed to pay two (2) promissory notes relating to delinquent royalties and fees, and, finally, that Petitioner Sullivan and Petitioner Gregory had failed to honor the terms of each of their joint and several guarantees of timely and full payment of said amounts. Counterclaim, ¶¶ 7-62 (Appendix B, pages B-2 — B-13).

2.

COURSE OF PROCEEDINGS IN THE DISTRICT COURT

The case was tried on March 26, 27 and 30, 1987.

Petitioners' proofs focused upon their subjective dissatisfaction with the timing, character and extent of the advertising undertaken in Petitioners' marketplace by Respondent, in Respondent's capacity as administrator

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[2] Count II of Petitioners' Complaint alleged Respondent tortiously interfered with advantageous contractual and business relationships enjoyed by Petitioners. The District Court granted Respondent's motion for summary judgment with respect to Count II by Memorandum Opinion and Order dated January 20, 1987, and Petitioners did not appeal therefrom.

of the Popeyes' Advertising Fund. Petitioners acknowledged having received advertising support, but not to an extent they deemed adequate or effective.

Respondent established, through its cross examination and examination of witnesses introduced by Petitioners, that various forms of advertising support were, in fact, provided to Petitioners. Furthermore, documentary evidence was introduced, consisting of, *inter alia*, television and radio "buy" sheets, station logs showing "air time", invoices for advertising and various cancelled checks showing payment for such advertising.

When Petitioners rested their case at the end of the third day of trial, Respondent moved to dismiss on the ground that Petitioners had failed to prove any breach of the contract language at issue. Each of the franchise agreements vested Respondent with sole discretion as to the timing and placement of advertising, the agreement specifically providing:

> "... Franchisee, recognizing the value of advertising and the importance of the standardization of advertising and promotion to the goodwill and public image of POPEYES Famous Fried Chicken System, agrees to pay to The POPEYES Famous Fried Chicken Advertising Fund a recurring, non-refundable advertising fund contribution to be paid on a weekly basis, ... of three percent (3%) of the gross sales for the preceding week ..., which sum shall be expended by The POPEYES Famous Fried Chicken Advertising Fund ..., administered for national, regional and local advertising and promotional materials for the POPEYES Famous Fried Chicken System. All reasonable costs incurred by Franchisor ... for the production and dissemination of such advertising and promotional materials may be

> charged to The Advertising Fund . . . . *There shall be no requirement that all or any part of the Fund be disbursed within any accounting period. Selection of medial and locale for media placement shall be at the sole discretion of the Administrator of the Fund.* Franchisee understands that such advertising is intended to maximize the public's awareness of POPEYES Famous Fried Chicken restaurants, and that *Franchisor accordingly undertakes no obligation to insure that any individual franchisee benefits directly or on a pro rata basis from the placement, if any, of such advertising in his local market."* (Emphasis added) Joint Trial Exhibit 3, Franchise Agreement, Article III, ¶ B (Appendix C, pages C-5 – C-6).

The Court granted Respondent's motion, stating that Petitioners had failed to identify any provision of the franchise agreements which had been breached. The Court held the foregoing contract language relating to the payment of advertising fees by Petitioner Sullivan-Gregory, Inc. expressly precluded the kinds of claims advanced in Petitioners' proofs. The Court pointed out said contract language specifically provided there was no requirement monies be spent during any particular accounting period or in any particular franchisee's geographic market. Furthermore, the Court noted that said language contained a disclaimer indicating that Popeyes undertook no obligation to insure that any individual franchisee benefited directly or on a *pro rata* basis from advertising undertaken by the franchisor from the proceeds of advertising-fee payments made by its franchisees. Inasmuch as Petitioners had failed to demonstrate a breach of said contract provisions, the Court concluded Petitioners had failed to present a *prima facie* case.

On the morning of March 31, 1987, Respondent moved for summary judgment, pursuant to Fed R Civ P 56, on its counterclaim for unpaid franchise royalties and advertising fees due under each of the six franchise agreements, maintaining that the admissions contained in Petitioners' answer to the counterclaim, coupled with Petitioners' stipulating to the delinquency amounts recited in joint trial exhibit 184 (Appendix D) and Petitioners' failure to have shown any breach of the contract by Respondent in Petitioners' proofs, precluded the need for additional proofs by Respondent on said counterclaim. Simply stated, Petitioners had admitted utilizing their franchise rights without paying the corresponding weekly royalties and advertising fees required by the franchise agreements. The Court agreed, granting summary judgment in the amounts shown on joint trial exhibit 184 (Appendix D).

On April 3, 1987, the Court entered judgment against Petitioners, jointly and severally, in the amount of Nine Hundred Twenty-Six Thousand Four Hundred Twenty and 79/100 ($926,420.79) Dollars. Said sum represented the cumulative amount of delinquency set forth in stipulated trial Exhibit 184, and consisted of accrued franchise royalties, advertising fees, together with interest thereon, plus amounts due under two defaulted promissory notes (Appendix D).

On May 4, 1987, Petitioners filed a claim of appeal with the United States Court of Appeals for the Sixth Circuit.

3.

PROCEEDINGS IN THE COURT OF APPEALS

In their appeal, Petitioners alleged error both with respect to the dismissal of their complaint and

the grant of summary judgment on Respondent's counterclaim.

In a *per curiam* opinion filed September 9, 1988, the Court of Appeals sustained the trial court's rulings in their entirety. Addressing Petitioners' breach-of-contract allegations relative to lack of advertising support, the Court of Appeals indicated it found no error in the District Court's conclusion that the stated provision of the franchise agreement, leaving to the Advertising Fund Administrator's discretion the timing, selection and placement of advertising, contained no requirement that the Administrator undertake the duty to please individual franchisees, including Petitioner Sullivan-Gregory, Inc., by selecting advertising that specifically benefited a particular market or a particular store. The Court pointed out:

> "SGI did not allege or prove a complete failure by Popeyes to provide advertising and promotional materials; instead, it alleged that Popeyes had provided too little advertising in Detroit and not as much promotional assistance as SGI believed was necessary to give it the help needed." (Petitioners' Appendix C, page C-5).

The Court held that Petitioners' complaint, therefore, was properly dismissed.

Turning to the trial court's grant of summary judgment on Respondent's counterclaim, the Court of Appeals addressed Petitioners' argument that the advertising-fee payment provision of the franchise agreement was "divisible" from the remainder of the agreement. The Court stated it had to first determine, from the nature and language of the contract, the parties' intent in entering into the franchise agreements under

Louisiana law.[3] Because, pursuant to Louisiana law, Petitioner Sullivan-Gregory, Inc.'s several undertakings under the franchise agreements, as well as Popeyes', would be considered as dependent and part of the entire agreement, the Court of Appeals concluded that the trial court had demonstrated no error in construing the franchise agreement to be indivisible and non-executory in nature.

The Court of Appeals also addressed Petitioners' contention the trial court had erred by not properly applying Michigan law, as *lex fori*, on the issue of remedies available to the parties. The Court of Appeals concluded that no principle of Michigan law had been abrogated:

> "Considering the question of damages to be a matter of remedy governed by Michigan law, as that of the forum state, we note that SGI did not contest Popeyes' claim by asserting before the district court that Popeyes had not proved its performance. Rather, SGI claimed that Popeyes was required to establish the amount of actual damages caused by SGI's default in paying the contractual royalties and advertising allowances.
>
> * * *
>
> "The agreements in question indicated the parties' intent that advertising fees (and royalty fees) were to be utilized for the ongoing promotion of the Popeyes system as a whole. They did not provide that advertising and promotion services were first to be performed in the Detroit area before SGI's obligations to pay the fees were

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[3] The franchise agreements contained a choice-of-law clause favoring the law of Louisiana. Joint trial exhibit 3, Article XXIII, ¶ A (Appendix C, page C-43).

> triggered. During the entire period in dispute, SGI was accorded the franchisor's product line, food techniques and formulas, restaurant design and operating procedures, logo, store manuals, and the like. Whether SGI's stores directly received $925,000 worth of Detroit area newspaper, television and other media advertising is not the question; under the franchise agreements, Popeyes was not obligated to allocate SGI's payments to Detroit area advertising. SGI utilized Popeyes' services and name during the period involved, and it has an inter-related, dependent obligation to make the prescribed payments for these services, even though the services were not as extensive or 'helpful' as SGI desired. SGI incidentally acknowledged its ongoing liability from time to time by executing promissory notes representing unpaid and accrued cash obligations. The Michigan authority cited by SGI does not, in our view, support any contrary principles to those expressed herein." (Petitioners' Appendix C, pages C-7 – C-8).

In conclusion, the Court of Appeals succinctly stated:

> " SGI did not repudiate the franchise agreements during the period in dispute. It continued to operate the Popeyes franchise restaurants and continued to receive the benefits of the Popeyes support system. It cannot now complain that Popeyes must prove actual damages rather than the agreed contract fees due and payable arising out of SGI's ongoing breaches." (Petitioners' Appendix C, page C-8).

The Court found no error in the trial court's grant of summary judgment, stating it had viewed the evidence

in the light most favorable to Petitioners but was unable to discern a genuine issue of material fact regarding Petitioners' liability on the contract delinquencies. The trial court's rulings were, accordingly, sustained.

By Order dated November 4, 1988, the Court of Appeals denied Petitioners' petition for rehearing, and by Order dated November 9, 1988, it denied Petitioners' request for rehearing *en banc*.

SUMMARY OF ARGUMENT

This case is not appropriate for review by the United States Supreme Court. This is a breach of contract case which is in the federal courts through diversity jurisdiction. The rulings of the District Court and Court of Appeals are both appropriate and supported by the record. This case does not involve federal questions, and does not present a conflict with decisions of the United States Supreme Court, with Courts of Appeal of any other circuits, nor with the law of the State of Michigan. This case is therefore not similar to the character of cases listed in Supreme Court Rule 17 as having a "special and important" reason for review by the United States Supreme Court.

Petitioners argue that the District Court and Court of Appeals decisions violate their due process rights because there is "no rational basis" for their decisions. This suggested new standard for Supreme Court review has no predicate in reported cases. Furthermore, even if Petitioners' bizarre no-rational-basis-for-decision contention were true, it is well settled that mere judicial error is not a denial of due process.

Petitioners additionally argue that the law of the State of Michigan was not followed, violating this

Court's precepts in *Erie Railroad Co* v *Tompkins*. The record shows, however, that the decision of the District Court is supported by the facts before it, is not contrary to Michigan law and was properly upheld in the Court of Appeals. Petitioners' transparent arguments to the contrary ignore the clear and obvious intent of the judicial decisions at issue.

For all of the foregoing reasons, Respondent submits the petition for writ of certiorari should be denied.

ARGUMENT

I.

REVIEW OF THIS MATTER IS NOT APPROPRIATE UNDER THE STANDARDS OF SUPREME COURT RULE 17.

Supreme Court Rule 17 is manifest that a review on writ of certiorari will not be lightly granted. Review is appropriate "only when there are special and important reasons therefor". The examples cited in Rule 17 portray the character of cases that are considered "special and important". A comparison of these examples with the facts of the instant case demonstrates that the instant case is not one appropriate for review under the standards of Supreme Court Rule 17.

Rule 17 lists five examples of conduct by a federal Court of Appeals which are sufficiently "special and important" to warrant review on writ of certiorari. These are (1) when a federal court of appeals decision conflicts with the decision of another federal court of appeals on the same matter; (2) when a federal court of appeals has decided a federal question in conflict with a state court of last resort; (3) when a federal court of appeals has decided an important question of federal

law which has not been, but should be, settled by the United States Supreme Court; (4) when a federal court of appeals has decided a federal question in a way in conflict with applicable decisions of the United States Supreme Court; and (5) when a federal court of appeals has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the United States Supreme Court's power of supervision (Rule 17[a]).

The foregoing examples of cases meriting consideration by writ of certiorari evidence that a primary concern of the Supreme Court is the proper and consistent interpretation of federal law. The instant case, however, does not concern the application of federal law. This matter is a breach of contract claim which is in federal court through diversity, not federal question, jurisdiction.

Thus far in the history of these proceedings, no constitutional issues have been involved. Petitioners now attempt to fashion a question which concerns federal law by arguing that the District Court and the Court of Appeals have violated Petitioners' due process rights because there is "no rational basis" for the Courts' decisions. As will be discussed *infra*, Petitioners' contention that the Courts have made erroneous decisions do not raise a federal question.

Petitioners also argue that the District Court and Court of Appeals decisions do not follow the doctrine of *Erie Railroad Co* v *Tompkins*, 304 US 64; 58 S Ct 817; 82 L Ed 1189 (1937). However, Petitioners' argument on this issue is based on a disregard and mischaracterization of the record. As will be discussed *infra*, an examination of the decisions in this matter reveals there is no inconsistency with the law of the State of Michigan and no inconsistency with the *Erie* decision.

The instant case has no similarity to the cases listed by Supreme Court Rule 17 as the type of cases which merit review by the United States Supreme Court. This matter concerns no federal questions, presents no conflict with judicial decisions of this Court or with decisions of the Michigan courts, and is a matter in which the lower federal courts have acted in compliance with the accepted and usual course of judicial proceedings. There is no "special and important" reason for Supreme Court review, and the petition for writ of certiorari should be denied.

II.

THE DECISIONS OF THE DISTRICT COURT AND COURT OF APPEALS DO NOT DEPRIVE PETITIONERS OF DUE PROCESS.

In an attempt to raise some issue worthy of the attention of the United States Supreme Court, Petitioners argue that the decisions of the District Court and the Court of Appeals have violated their due process rights.

In this argument, Petitioners apparently seek to create a standard of appellate review such that in any case, if an appealing party perceives there is no "rational basis" for a lower court's decision, the lower court has violated the appellant's due process rights, and a federal question is raised. Petitioners' suggested new standard of appellate review has no legal predicate. It has been firmly established that mere judicial error does not constitute a denial of due process. In *Bell Telephone Co of Pennsylvania* v *Pennsylvania Public Utility Comm*, 309 US 30; 60 S Ct 388; 84 L Ed 563 (1940), the United States Supreme Court dismissed the petitioner's appeal for want of a substantial federal question. In *Bell Telephone*, a public utility argued that the Utility Commission's rate reduction, and the court's affirmance thereof,

deprived the utility of its property without due process of law because it was arbitrary and without support in the evidence. In dismissing the utility's appeal, this Court stated:

> "it cannot be said that a state court denies due process when in an appropriate hearing it determines that there is evidence to sustain a finding of the violation of state law with respect to the conduct of local affairs. The contention that such a decision is erroneous does not present a federal question (citation omitted)." *Id* at 32.

And in *Beck* v *Washington*, 369 US 541; 82 S Ct 955; 8 L Ed 2d 98 (1962), this Court stated:

> "the petitioner's argument here comes down to a contention that Washington law was misapplied. Such misapplication cannot be shown to be an invidious discrimination. We have said time and again that the Fourteenth Amendment does not 'assure uniformity of judicial decisions . . . [or] immunity from judicial error . . .' (citations omitted) were it otherwise, every alleged misapplication of state law would constitute a federal constitutional question." *Id* at 554-5.

As will be discussed, there is no error in the decisions of the District Court and the Court of Appeals. However, even if there had been error, previous decisions of this Court confirm that such error does not *per se* amount to a violation of due process. Petitioners' due process argument is without merit.

III.

THE RULE OF *ERIE RAILROAD CO* v *TOMPKINS* HAS NOT BEEN VIOLATED.

Petitioners also argue that the Court of Appeals upheld an award which would not have been granted by a state court in Michigan, and thus did not follow the rule of *Erie* v *Tompkins, supra*. The rule of *Erie* is that in a diversity case, the federal court must follow the law of the state where the federal court sits. *Erie, supra*, at 89-90. However, as is apparent from review of the record, nothing in the decision of either the District Court or the Court of Appeals is contrary to the principles of *Erie*.

Petitioners' argument is that the decision rendered by the District Court would not have been made by a Michigan state court because the decision is at odds with *Mt Ida School for Girls* v *Rood*, 253 Mich 482; 253 NW 227 (1931) and *Walton School of Commerce* v *Stroud*, 248 Mich 85; 226 NW 883 (1929). However, *Rood* and *Stroud* are inapposite because their facts are easily distinguishable from the facts of the instant case. The Court of Appeals expressly addressed, and properly rejected, Petitioners' strained misapplication of *Rood* and *Stroud*.

In *Rood*, the defendant contractually agreed to pay for his daughter's board and tuition at boarding school for a full school year. However, the daughter attended the school only until the Christmas vacation, and thereafter did not return. The Court found that the defendant was not liable for the amount of the full-year contract, stating that "a party to an executory contract may always stop performance by the other party and refuse to perform on his part, and after his refusal he is

liable only upon the breach of the contract." Rood, supra, at 486 (emphasis in original).

In *Stroud,* the defendant entered into an enrollment contract for three courses of instruction with a correspondence school. Defendant received and paid for one course of instruction, but refused to accept the other two courses. The Court found that the defendant had stopped the school's performance of the contract by his own refusal to perform, and thus was not liable for the full contract price of three courses. *Stroud, supra,* at 90.

In the instant case, the Petitioners failed to pay royalty and advertising fees during weeks in which they utilized, and enjoyed the benefits of, their contractual franchise rights accorded them by Respondent. This is unlike *Rood* and *Stroud,* where the defendants did not receive the benefit of any consideration provided by plaintiff.

The District Court found that there was no breach of the contract by Respondent, that the weekly advertising fee payment provisions were an indivisible part of the contract, and that the unpaid franchise and royalty fees were due and owing by Petitioners because the Petitioners had admitted utilizing the franchise system during the period of delinquency. The Court of Appeals affirmed, finding no error in the District Court's construction of the contract.

Petitioners ignore these judicial determinations and seek to revisit the question of the construction of the contract. Petitioners do this by first maintaining that the District Court did not really construe the contract, and second, by arguing that the Court of Appeals did not really affirm the District Court's construction of the contract, but rather fashioned a new category of contracts — that of "nonexecutory" contracts. Both of

these arguments ignore the clear intention of the decisions of the District Court and the Court of Appeals.

Petitioners begin by asserting that the District Court did not construe the contract. However, the record proves the contrary. The oral argument of Respondent's motion to dismiss complaint and Respondent's ensuing motion for summary judgment on its counterclaim reflects that different constructions of the contract were suggested by each party. The construction question before the Court was essentially whether the contract required Petitioners to pay advertising and royalty fees weekly, or whether such payment was also contingent on Respondent's prior or concurrent placement of local advertising.

Respondent maintained that the contract unequivocally provided for payment of franchise royalties of five percent (5%) gross sales and of advertising fees of three percent (3%) gross sales on a weekly basis (Petitioners' Appendix A, page A-2); that the contract clearly provided that failure to pay such indebtedness constituted a breach of the agreement (Petitioners' Appendix A, page A-6); and that the remedy provided by the contract was the amount of the obligation owed plus interest (Petitioners' Appendix A, page A-8).

Petitioners argued that the contract was illusory, one under which nothing was owed by Petitioners until money was paid out by Respondent for local advertising. As argued by Petitioners' counsel: "a logical construction of this would mean it is not due and owing" (Petitioners' Appendix A, page A-10).

The court considered the proofs before it, including the contract and Petitioners' admitted use of franchise rights during the periods of delinquency, and awarded judgment in favor of Respondent in the stipulated

amount of the unpaid royalties and fees (Petitioners' Appendix A, page A-15).

The District Court's remarks clearly express the Court's intent. In awarding the royalties and fees specified by the contract, the District Court construed the contract to require that the weekly franchise royalties and advertising fees be paid during the period of use of the franchise. Petitioners' assertions that the District Court failed to construe the contract ignore the plain intent and inherent logic of the District Court's statements on the record.

Petitioners also argue that the Court of Appeals did not affirm the District Court's construction of the contract but rather fashioned a new category of "nonexecutory" contracts. Petitioners again wholly fail to recognize the intent of the judicial opinion. The District Court had construed the contract to require payment of the franchise royalties and advertising fees on a weekly basis, without regard to any further contingency. Thus, as each week passed, as to the payment of royalties and fees during the period of usage of franchise rights, the franchise agreement was an executed contract, *i.e.*, nothing further was to be performed before the specified sums were due and owing. The Court of Appeals recognized both the import of the District Court's findings in this regard and the difference between the instant contract and the *Rood* and *Stroud* "executory" contracts. Thus, the Court held that "there was no error demonstrated in the District Court's construing the contract to be indivisible and nonexecutory in its nature." (Petitioner's Appendix C, pages C-6–C-7).

Petitioners next argue that Michigan law recognizes only two categories of contracts, "executed" and "executory", and because the Court of Appeals uses the

term "nonexecutory", the Court "fabricated" a new category of contract. However, there is no suggestion in the Court's opinion that it sought to recognize a third category of contracts, or that it wished to depart from the two recognized categories of contracts. In the English language, the prefix "non" means "not", "other than" or "reverse of", *see* Webster's Ninth New Collegiate Dictionary (1983). The Court of Appeals clearly intended "nonexecutory" to be a synonym for "executed". Because Petitioners had, in fact, utilized their franchise rights during the periods of royalty and fee delinquencies, the contract was, to that extent, indeed "executed". Petitioners' strained argument that the Court of Appeals bastardized Michigan contract law ignores the plain thrust of the Court's opinion.

The record verifies that there is factual support for the District Court's construction of the contract, because the contract language expressly provides for the fees to be paid on a weekly basis. The Court of Appeals recognized that there was no error in this factual determination by the District Court (Petitioners' Appendix A, pages C-6, C-7). It is not proper for this Court to reappraise the evidence when there is a basis for the factual determinations made below. *Roemer* v *Board of Public Works of Maryland*, 426 US 736, 756; 96 S Ct 2337; 49 L Ed 2d 17 (1976).

Petitioners have had their day in court on the question of the nature of the contract, and both the District Court and the Court of Appeals held against Petitioners. Petitioners' suggested interpretation of this contract has been soundly rejected. The contract has been properly determined to be unlike the contracts at issue in the *Rood* and *Stroud* cases, and the *Rood* and *Stroud* cases are thus irrelevant to the instant case.

The decisions of the District Court and the Court of Appeals are in accordance with Michigan law. A judicial determination was made, based on the language of the contract, that the advertising and royalty fees were currently due and owing without regard to placement of local advertising by Respondent. The amount awarded to the Respondents was based on the amount of the contractually-specified royalties and fees which Petitioners had not paid in past weeks, as required by the contract, during the periods of their admitted usage of franchise rights. There is nothing in these findings that is contrary to Michigan law, and thus the decisions of the District Court and the Court of Appeals are in accordance with the rule of *Erie*.

Petitioners' final argument is that review by this Court is necessary to correct a situation which will severely impair the ability of the State of Michigan to regulate the business of franchising. Respondent agrees that franchising is an expanding form of business activity, and that it occupies an important place in the commercial world. This fact, however, bears little relationship to the items in dispute here. Regulation of franchising by the State of Michigan has *not* been an issue in this case, either in the trial court or the Court of Appeals.

Supreme Court Rule 17 sets forth the character of cases which are appropriate for review by the United States Supreme Court. Petitioners' argument would add to that rule all cases which are important to commerce. Such an addition is without judicial support or logical merit, and should be disregarded.

CONCLUSION

Petitioners are disappointed with the determination made against them by the lower federal courts in this matter, and have labored to fashion a question of special importance in order to have their arguments heard a third time. Despite Petitioners' efforts, however, the true character of this case is apparent. This case is a contract dispute which involves no question of federal law, involves no constitutional issues, and presents no conflict with decisions of this Court or with decisions of the courts of the State of Michigan. In short, this matter is simply not one in which there are special and important reasons which warrant review by the United States Supreme Court. The petition for writ of certiorari should, therefore, be denied.

Respectfully submitted,

SOTIROFF ABRAMCZYK & RAUSS, P.C.

By: /s/ LAWRENCE R. ABRAMCZYK
Counsel of Record
Attorney for Respondent
30400 Telegraph Road, Suite 444
Birmingham, Michigan 48010
(313) 642-6000

Dated: March 1, 1989

APPENDICES TO BRIEF IN OPPOSITION

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APPENDIX A

COMPLAINT

(Filed March 28, 1985)

(United States District Court —
Eastern District of Michigan — Southern Division)

(WILLIAM F. GREGORY, MICHAEL C. SULLIVAN and SULLIVAN-GREGORY, INC., a Michigan corporation, Plaintiffs, -vs- POPEYE'S FAMOUS FRIED CHICKEN & BISCUITS, INC., formerly known as POPEYE'S FAMOUS FRIED CHICKEN CORPORATION, a Louisiana corporation, Defendant — No. 85CV71383DT)

Now come WILLIAM F. GREGORY, MICHAEL C. SULLIVAN and SULLIVAN-GREGORY, INC., a Michigan corporation, by their attorneys, BARBIER, GOULET, PETERSMARCK, TOLLESON, MEAD & PAIGE, P.C., and for their Complaint against the Defendant state as follows:

COUNT I

BREACH OF CONTRACT

1. That Plaintiff, WILLIAM F. GREGORY, is domiciled in and a resident of the County of Oakland, State of Michigan.

2. That Plaintiff, MICHAEL C. SULLIVAN, is domiciled in and a resident of the County of Oakland, State of Michigan.

3. That Plaintiff, SULLIVAN-GREGORY, INC., is a Michigan corporation, with its principal place of business i. . the County of Oakland, State of Michigan.

4. That Defendant, POPEYE'S FAMOUS FRIED CHICKEN CORPORATION, is a Louisiana corporation, with its principal place of business in the State of Louisiana.

5. This action is of a civil nature involving, exclusive of interest and costs, a sum in excess of $10,000. Every issue of law and fact herein is wholly between citizens of different states.

6. That on or about May 18, 1978, Plaintiffs entered into a Franchise Option Agreement with the Defendant for the purchase of fourteen (14) Popeye's Famous Fried Chicken franchises in a designated area.

7. That said Franchise Option Agreement was amended on April 8th, 1980, December 4th, 1980 and October 22nd, 1981.

8. A copy of said Franchise Option Agreement is attached hereto as Exhibit A.

9. That pursuant to said Franchise Option Agreement, Plaintiffs paid Defendant the sum of FIVE THOUSAND ($5,000.00) DOLLARS for each option, for a total of SIXTY FIVE THOUSAND ($65,000.00) DOLLARS.

10. That pursuant to said Agreement, Plaintiffs paid Defendant an additional sum of FIFTEEN THOUSAND ($15,000.00) DOLLARS for each franchise opened, for a total of NINETY THOUSAND ($90,000.00) DOLLARS.

11. That pursuant to said Franchise Option Agreement, Defendant issued to and entered into a Franchise Agreement with Plaintiff, for franchises as follows:

(a) Troy store — March 30, 1979
(b) Pontiac store — March 3, 1981
(c) Bloomfield Hills store — January 13, 1982
(d) Mt. Clemens store — May 19, 1982
(e) Southfield store — February 4, 1983

(f) Van Dyke store — November 30, 1983.

12. A copy of the Franchise Option Agreement for the Troy store is attached hereto as Exhibit B. The other Franchise Agreements are identical to the Troy store Franchise Agreement.

13. That pursuant to the Franchise Agreements, it was Plaintiffs' obligation to pay a TWENTY THOUSAND ($20,000.00) DOLLAR franchise fee for each franchise, a weekly royalty fee which was five (5%) percent of gross sales for each franchise, and a weekly advertising fund contribution which was three (3%) percent of gross sales for each franchise.

14. That pursuant to said Franchise Agreements, it was Defendant's obligation to provide advertising and promotional programs through the administrator of the Popeye's Fried Chicken Advertising Fund.

15. That Defendant breached the Franchise Agreements by failing to provide adequate advertising or promotion for any of the Michigan franchises.

16. That because of Defendants' breach, Plaintiffs have sustained substantial damages in excess of TEN THOUSAND ($10,000.00) DOLLARS.

WHEREFORE, Plaintiffs request that this Honorable Court enter a judgment in their favor and against the Defendant for whatever amount the Plaintiffs are to be found entitled, including lost profits, together with interest as provided by law, costs and attorneys fees.

COUNT II

TORTIOUS INTERFERENCE WITH ADVANTAGEOUS CONTRACTUAL AND BUSINESS RELATIONSHIP

17. Plaintiffs herein incorporate by reference paragraphs 1 through 16 of their Complaint.

18. That Defendant improperly interferred with its current and prospective contractual relationship with the Plaintiffs by failing to provide adequate advertising or promotion of the Michigan franchises.

19. That Defendant interferred with its current and prospective contractual relationship with the Plaintiffs by permitting and encouraging the failure of three (3) other Michigan franchise operators, thereby degrading and destroying the Popeye concept and image.

20. That although the Franchise Option Agreement granted Plaintiffs fourteen (14) stores, Plaintiffs have been able to establish only six (6) stores.

21. That at the time the parties entered into the Franchise Option Agreement, Defendant knew or should have known that it could not or would not provide the required advertising and promotional support for the Plaintiffs' franchises.

22. That Defendant acted wilfully and intentionally and without just cause.

23. That because of the Defendant's actions, Plaintiffs have incurred substantial damages in excess of TEN THOUSAND ($10,000.00) DOLLARS.

WHEREFORE, Plaintiffs request that this Honorable Court enter a judgment against the Defendant, in whatever amount they are found to be entitled, including puntative damages, together with interest as provided by law, costs and attorney fees.

BARBIER, GOULET, PETERSMARCK,
TOLLESON, MEAD & PAIGE, P.C.
BY: /s/ RALPH W. BARBIER, JR., P10422
JOHN B. CARLIN, JR., P11616
Attorneys for Plaintiffs
34820 Harper Avenue
Mt. Clemens, Michigan 48043

APPENDIX B

COUNTERCLAIM

(United States District Court —
Eastern District of Michigan — Southern Division)

(Filed May 22, 1985)

(WILLIAM F. GREGORY, MICHAEL C. SULLIVAN and SULLIVAN-GREGORY, INC., a Michigan Corporation, Plaintiffs, -vs- POPEYE'S FAMOUS FRIED CHICKEN & BISCUITS, INC., formerly known as POPEYE'S FAMOUS FRIED CHICKEN CORPORATION, a Louisiana corporation, Defendant Case No. 85CV71383DT; Hon. George La Plata)

NOW COMES Defendant/Counter-Plaintiff, Popeye's Famous Fried Chicken & Biscuits, Inc. ("Popeyes"), by its attorneys, Donovan Donovan Hammond Ziegelman Roach & Sotiroff, P.C., and Butler Heebe & Hirsch, and counterclaims against Plaintiffs/Counter-Defendants William F. Gregory ("Gregory"), Michael C. Sullivan ("Sullivan") and Sullivan-Gregory, Inc. ("Sullivan-Gregory"), as follows:

1. Popeyes is a corporation incorporated under the laws of the state of Louisiana, domiciled in the Parish of Jefferson, State of Louisiana. Popeyes is the successor corporation to "Popeye's Famous Fried Chicken Corporation", which was likewise a Louisiana corporation, domiciled in the Parish of Jefferson.

2. Upon information and belief, Gregory and Sullivan are individuals, domiciled in the County of Oakland, State of Michigan.

3. Upon information and belief, Sullivan-Gregory is a Michigan corporation, having its principal place of business in the County of Oakland.

4. This Court has jurisdiction of this Counterclaim, because it arises out of the transaction and/or occurrence which is the subject matter of Plaintiffs' Complaint and does not require for its adjudication the presence of any third parties. Furthermore, this Court has jurisdiction pursuant to 28 USC § 1332, because Counter-Plaintiff and Counter-Defendants are of diverse citizenship and the amount in controversy herein exceeds the sum of $10,000.00, exclusive of interest and costs.

5. On or about May 18, 1978, Popeyes, on the one hand, and Gregory, Sullivan and Sullivan-Gregory, on the other, executed a Franchise Option Agreement pursuant to which Counter-Defendants were given an option to construct and operate fourteen (14) stores which would be franchised to sell Counter-Plaintiff's products in accordance with the terms and conditions of said agreement. A copy of the Franchise Option Agreement is attached hereto as Exhibit A and incorporated herein by reference.

6. Thereafter, on or about April 8, 1980; December 10, 1980 and October 22, 1981, the Franchise Option Agreement was amended by the parties. Copies of said Amendments are attached hereto as Exhibits B, C and D, respectively, and incorporated herein by reference.

COUNT I

BREACH OF ROCHESTER ROAD
FRANCHISE AGREEMENT

7. Gregory, Sullivan and Sullivan-Gregory constructed a store at 3130 Rochester Road, Troy, Michigan

for the purpose of commencing a franchised Popeye's Famous Fried Chicken business at that location.

8. As provided in the Franchise Option Agreement, Popeyes (as Franchisor) and Gregory, Sullivan and Sullivan-Gregory (as Franchisee) entered into a Franchise Agreement dated March 30, 1979, which set forth the terms and conditions by which said franchised business was to be conducted. A copy of said Franchise Agreement is attached hereto as Exhibit E and incorporated herein by reference.

9. Gregory, Sullivan and Sullivan-Gregory have continuously operated the Popeye's Famous Fried Chicken franchise located at 3130 Rochester Road, Troy, Michigan, since March 30, 1979.

10. The subject Franchise Agreement requires, *inter alia*, Counter-Defendants to pay Popeyes (i) a weekly royalty of five (5%) percent of the gross sales at said store for the preceding week and (ii) a weekly advertising fund contribution in the amount of three (3%) percent of the gross sales of said store for the preceding week.

11. As of May 14, 1985, Counter-Defendants were delinquent in the payment of One Hundred Forty Four (144) weeks franchise royalties totaling Ninety Eight Thousand Eight Hundred Ninety Nine and 19/100 ($98,899.19) Dollars.

12. As of April 14, 1985, Counter-Defendants were delinquent in the payment of One Hundred Forty Four (144) weeks advertising fund contributions, totaling Fifty Eight Thousand Five Hundred Fourteen and 48/100 ($58,518.48) Dollars.

13. Counter-Defendants' failure to pay the referenced franchise royalties and advertising fund contributions are events of default under the Franchise Agreement.

14. As a result of Counter-Defendants' foregoing breaches of contract, Popeyes has been damaged in the amounts of Ninety Eight Thousand Eight Hundred Ninety Nine and 19/100 ($98,899.18) Dollars and Fifty Eight Thousand Five Hundred Fourteen and 48/100 ($58,514.48) Dollars, respectively.

WHEREFORE, Popeyes prays for judgment in Count I of this Counterclaim against Gregory, Sullivan and Sullivan-Gregory in the amount of One Hundred Fifty Seven Thousand Four Hundred Thirteen and 67/100 ($157,413.67) Dollars, together with its costs and attorney's fees.

COUNT II

BREACH OF EAST BOULEVARD
FRANCHISE AGREEMENT

15. Gregory, Sullivan and Sullivan-Gregory constructed a restaurant at 630 East Boulevard, Pontiac, Michigan for the purpose of commencing a franchised Popeye's Famous Fried Chicken business at that location.

16. As provided in the Franchise Option Agreement, Popeyes (as Franchisor) and Gregory, Sullivan and Sullivan-Gregory (as Franchisee) entered into a Franchise Agreement dated March 3, 1981, setting forth the terms and conditions by which said franchised business was to be conducted. A copy of said Franchise Agreement is attached hereto as Exhibit F and incorporated herein by reference.

17. Gregory, Sullivan and Sullivan-Gregory have continuously operated the Popeye's Famous Fried Chicken franchise located at 630 East Boulevard, Pontiac, Michigan, since March 3, 1981.

18. The subject Franchise Agreement requires, *inter alia*, Counter-Defendants to pay Popeyes (i) a weekly roy-

alty of five (5%) of the gross sales at said store for the preceding week and (ii) a weekly advertising fund contribution in the amount of three (3%) percent of the gross sales of said store for the preceding week.

19. As of May 14, 1985, Counter-Defendants were delinquent in the payment of One Hundred Forty Four (144) weeks franchise royalties totaling Eighty One Thousand Two Seventeen and 37/100 ($81,217.37) Dollars.

20. As of April 14, 1985, Counter-Defendants were delinquent in the payment of Forty Seven Thousand Eight Hundred Forty Seven and 83/100 ($47,847.83) Dollars.

21. Counter-Defendants' failure to pay the referenced franchise royalties and advertising fund contributions are events of default under the Franchise Agreement.

22. As a result of Counter-Defendants' foregoing breaches of contract, Popeyes has been damaged in the amounts of Eighty One Thousand Two Hundred Seventeen and 37/100 ($81,217.37) Dollars and Forty Seven Thousand Eight Hundred Forty Seven and 83/100 ($47,847.83) Dollars, respectively.

WHEREFORE, Popeyes prays for judgment in Count II of this Counterclaim against Gregory, Sullivan and Sullivan-Gregory in the amount of One Hundred Twenty Nine Thousand Sixty Five and 20/100 ($129,065.20) Dollars, together with its costs and attorney's fees.

COUNT III

BREACH OF SOUTH TELEGRAPH
FRANCHISE AGREEMENT

23. Gregory, Sullivan and Sullivan-Gregory, constructed a restaurant at 1995 South Telegraph, West

Bloomfield, Michigan for the purpose of commencing a franchised Popeye's Famous Fried Chicken business at that location.

24. As provided in the Franchise Option Agreement, Popeyes (as Franchisor) and Gregory, Sullivan and Sullivan-Gregory (as Franchisee) entered into a Franchise Agreement dated January 18, 1982, setting forth the terms and conditions by which said franchise business was to be conducted. A copy of said Franchise Agreement is attached hereto as Exhibit G and incorporated herein by reference.

25. Gregory, Sullivan and Sullivan-Gregory have continuously operated the Popeye's Famous Fried Chicken franchise located at 1995 South Telegraph, West Bloomfield, Michigan, since January 13, 1982.

26. The subject Franchise Agreement requires, *inter alia*, Counter-Defendants to pay Popeye's (i) a weekly royalty of five (5%) percent of the gross sales at said store for the preceding week and (ii) a weekly advertising fund contribution in the amount of three (3%) percent of the gross sales of said store for the preceding week.

27. As of May 14, 1985, Counter-Defendants were delinquent in the payment of One Hundred Forty Four (144) weeks franchise royalties totaling Fifty Four Thousand Three Hundred Ninety Three and 77/100 ($54,393.77) Dollars.

28. As of April 14, 1985, Counter-Defendants were delinquent in the payment of Thirty Two Thousand Two Hundred and 94/100 ($32,200.94) Dollars.

29. Counter-Defendants' failure to pay the referenced franchise royalties and advertising fund contributions are events of default under the Franchise Agreement.

30. As a result of Counter-Defendants' foregoing breaches of contract, Popeyes has been damaged in the amounts of Fifty Four Thousand Three Hundred Ninety Three and 77/100 ($54,393.77) Dollars and Thirty Two Thousand Two Hundred and 94/100 ($32,200.94) Dollars, respectively.

WHEREFORE, Popeyes prays for judgment in Count III of this Counteclaim against Gregory, Sullivan and Sullivan-Gregory in the amount of Eighty Six Thousand Five Hundred Ninety Four and 71/100 ($86,594.71) Dollars, together with its costs and attorney's fees.

COUNT IV

BREACH OF SOUTH GRATIOT
FRANCHISE AGREEMENT

31. Gregory, Sullivan and Sullivan-Gregory constructed a restaurant at 1187 South Gratiot, Mount Clemens, Michigan for the purpose of commencing a franchised Popeye's Famous Fried Chicken business at that location.

32. As provided in the Franchise Option Agreement, Popeyes (as Franchisor) and Gregory, Sullivan and Sullivan-Gregory (as Franchisee) entered into a Franchise Agreement dated May 19, 1982, setting forth the terms and conditions by which said franchised business was to be conducted. A copy of said Franchise Agreement is attached hereto as Exhibit H and incorporated herein by reference.

33. Gregory, Sullivan and Sullivan-Gregory have continuously operated the Popeye's Famous Fried Chicken franchise located at 1187 South Gratiot Street, Mount Clemens, Michigan since May 19, 1982.

34. The subject Franchise Agreement requires, *inter*

alia, Counter-Defendants to pay Popeyes (i) a weekly royalty of five (5%) percent of the gross sales at said store for the preceding week and (ii) weekly advertising fund contribution in the amount of three (3%) percent of the gross sales of said store for the preceding week.

35. As of May 14, 1985, Counter-Defendants were delinquent in the payment of One Hundred Forty Four (144) weeks franchise royalties totaling Fifty Six Thousand Fifty Nine and 64/100 ($56,059.64) Dollars.

36. As of April 14, 1985, Counter-Defendants were delinquent in the payment of One Hundred Forty Four (144) weeks advertising fund contributions, totaling Thirty Three Thousand Two Hundred One and 48/100 ($33,201.48) Dollars.

37. Counter-Defendants' failure to pay the referenced franchise royalties and advertising fund contributions are events of default under the Franchise Agreement.

38. As a result of Counter-Defendants' foregoing breaches of contract, Popeyes has been damaged in the amounts of Fifty Six Thousand Fifty Nine and 64/100 ($56,059.64) Dollars and Thirty Three Thousand Two Hundred One and 48/100 ($33,201.48) Dollars, respectively.

WHEREFORE, Popeyes prays for judgment in Count IV of this Counterclaim against Gregory, Sullivan and Sullivan-Gregory in the amount of Eighty Nine Thousand Two Hundred Sixty One and 12/100 ($89,261.12) Dollars, together with its costs and attorney's fees.

COUNT V

BREACH OF GREENFIELD
FRANCHISE AGREEMENT

39. Gregory, Sullivan and Sullivan-Gregory con-

structed a restaurant at 29939 Greenfield, Southfield, Michigan for the purpose of commencing a franchised Popeye's Famous Fried Chicken business at that location.

40. As provided in the Franchise Option Agreement, Popeyes (as Franchisor) and Gregory, Sullivan and Sullivan-Gregory (as Franchisee) entered into a Franchise Agreement dated February 4, 1983, setting forth the terms and conditions by which said franchised business was to be conducted. A copy of said Franchise Agreement is attached hereto as Exhibit I and incorporated herein by reference.

41. Gregory, Sullivan and Sullivan-Gregory have continuously operated the Popeye's Famous Fried Chicken franchise located at 29939 Greenfield, Southfield, Michigan since February 4, 1983.

42. The subject Franchise Agreement requires, *inter alia*, Counter-Defendants to pay Popeyes (i) a weekly royalty of five (5%) percent of the gross sales at said store for the preceding week and (ii) a weekly advertising fund contribution in the amount of three (3%) percent of the gross sales of said store for the preceding week.

43. As of May 14, 1985, Counter-Defendants were delinquent in the payment of One Hundred Forty Four (144) weeks franchise royalties totaling Fifty Thousand Five Hundred Twelve and 29/100 ($50,512.29) Dollars.

44. As of April 14, 1985, Counter-Defendants were delinquent in the payment of One Hundred Forty Four (144) weeks advertising fund contributions, totaling Thirty Thousand Sixty Four and 10/100 ($30,064.10) Dollars.

45. Counter-Defendants' failure to pay the referenced

franchised royalties and advertising fund contributions are events of default under the Franchise Agreement.

46. As a result of Counter-Defendants' foregoing breaches of contract, Popeyes has been damaged in the amounts of Fifty Thousand Five Hundred Twelve and 29/100 ($50,512.29) Dollars and Thirty Thousand Sixty Four and 10/100 ($30,064.10) Dollars, respectively.

WHEREFORE, Popeyes prays for judgment in Count V of this Counterclaim against Gregory, Sullivan and Sullivan-Gregory in the amount of Eighty Thousand Five Hundred Seventy Six and 39/100 ($80,576.39) Dollars, together with its costs and attorney's fees.

COUNT VI

BREACH OF VAN DYKE
FRANCHISE AGREEMENT

47. Gregory, Sullivan and Sullivan-Gregory constructed a restaurant at 45246 Van Dyke, Utica, Michigan for the purpose of commencing a franchised Popeye's Famous Fried Chicken business at that location.

48. As provided in the Franchise Option Agreement, Popeyes (as Franchisor) and Gregory, Sullivan and Sullivan-Gregory (as Franchisee) entered into a Franchise Agreement dated November 30, 1983, setting forth the terms and conditions by which said franchised business was to be conducted. A copy of said Franchise Agreement is attached hereto as Exhibit J and incorporated herein by reference.

49. Gregory, Sullivan and Sullivan-Gregory have continuously operated the Popeye's Famous Fried Chicken franchise located at 45246 Van Dyke, Utica, Michigan since November 30, 1983.

50. The subject Franchise Agreement requires, *inter alia*, Counter-Defendants to pay Popeyes (i) a weekly royalty of five (5%) percent of the gross sales at said store for the preceding week and (ii) a weekly advertising fund contribution in the amount of three (3%) percent of the gross sales of said store for the preceding week.

51. As of May 14, 1985, Counter-Defendants were delinquent in the payment of One Forty Four (144) weeks franchise royalties totaling Twenty Five Thousand Five Hundred Nineteen and 88/100 ($25,519.88) Dollars.

52. As of April 14, 1985, Counter-Defendants were delinquent in the payment of One Hundred Forty Four (144) weeks advertising fund contributions, totaling Fifteen Thousand Three Hundred Thirty and 36/100 ($15,330.36) Dollars.

53. Counter-Defendants' failure to pay the referenced franchise royalties and advertising fund contributions are events of default under the Franchise Agreement.

54. As a result of Counter-Defendants' foregoing breaches of contract, Popeyes has been damaged in the amounts of Twenty Five Thousand Five Hundred Nineteen and 88/100 ($25,519.88) Dollars and Fifteen Thousand Three Hundred Thirty and 36/100 ($15,330.36) Dollars, respectively.

WHEREFORE, Popeyes prays for judgment in Count VI of this Counterclaim against Gregory, Sullivan and Sullivan-Gregory in the amount of Forty Thousand Eight Hundred Fifty and 24/100 ($40,850.24) Dollars, together with its costs and attorney's fees.

COUNT VII

DEFAULT ON PROMISSORY NOTE
(FIRST NOTE)

55. On or about March 4, 1982, Counter-Defendants

Gregory and Sullivan executed and delivered to Popeyes a Promissory Note in the principal amount of Eight Thousand Two and 08/100 ($8,002.08), with interest payable thereon at the rate of thirteen (13%) percent per annum until paid. A copy of said Promissory Note is attached hereto as Exhibit K and incorporated herein by reference.

56. The Promissory Note required Gregory and Sullivan, or either of them, to make payments to Popeyes in the amount of Four Hundred Forty Four and 56/100 ($444.56) Dollars per month for eighteen (18) consecutive months, commencing April 15, 1982.

57. Counter-Defendants Gregory and Sullivan have failed to make the required payments under the Promissory Note.

58. As of April 14, 1985, said Counter-Defendants were delinquent in the payment of Two Thousand Two Hundred Twenty Two and 80/100 ($2,222.80) Dollars.

WHEREFORE, Popeyes prays for judgment in Count VII of this Counterclaim against Gregory and Sullivan in the amount of Two Thousand Two Hundred Twenty Two and 80/100 ($2,222.80) Dollars, together with its costs and attorney's fees.

COUNT VIII

DEFAULT ON PROMISSORY NOTE
(SECOND NOTE)

59. On or about March 4, 1982, Counter-Defendant Gregory executed and delivered to Popeyes a Promissory Note in the principal amount of Thirteen Thousand Three Hundred Thirty Five and 66/100 ($13,335.66) Dollars, with interest thereon at the rate of thirteen (13%) percent per annum until paid. A copy of said Promissory Note is attached hereto as Exhibit L and incorporated herein by reference.

60. Pursuant to the terms of said Promissory Note, Gregory was required to make eighteen (18) monthly payments of Seven Hundred Forty and 87/100 ($740.87) Dollars, commencing April 15, 1982.

61. Counter-Defendant Gregory has failed to make the required payments under the Promissory Note.

62. As of April 14, 1985, Counter-Defendant Gregory was delinquent in the payment of Three Thousand Seven Hundred Four and 35/100 ($3,704.35) Dollars under said Promissory Note.

WHEREFORE, Popeyes prays for judgment in Count VIII of this Counterclaim against Gregory in the amount of Three Thousand Seven Hundred Four and 35/100 ($3,704.35) Dollars, together with its costs and attorney's fees.

DONOVAN HAMMOND ZIEGELMAN
ROACH & SOTIROFF, P.C.
By: Lawrence R. Abramczyk
400 Renaissance Center, Suite 1100
Detroit, Michigan 48243

BUTLER, HEEBE & HIRSCH
By: Aubrey B. Hirsch, Jr.
712 American Bank Building
New Orleans, Louisiana 70130

Attorneys for Defendant and Counter-Plaintiff, Popeye's Famous Fried Chicken & Biscuits, Inc.

Dated: May 21, 1985

APPENDIX C

POPEYES FAMOUS FRIED CHICKEN CORPORATION FRANCHISE AGREEMENT

(Joint Trial Exhibit 3)

THIS AGREEMENT made this *30th* day of *March, 1979* by and between POPEYES Famous Fried Chicken Corporation, a Louisiana corporation with its principal place of business in Metairie, Louisiana (hereinafter referred to as "Franchisor, its subsidiaries, affiliates, parents and related entities) and *WILLIAM F. GREGORY and MICHAEL C. SULLIVAN, SULLIVAN-GREGORY ~~CORPORATION~~ [INC.] JOINTLY and SEVERALLY* (hereinafter referred to as "Franchisee").

WITNESSETH:

WHEREAS, Franchisor, as the result of the expenditure of time, skill, effort, and money has developed and owns a unique system relating to the opening and operating of restaurants specializing in the preparation and sale of highly spiced chicken made with a unique spice and batter formula and other related menu items utilizing confidential food formulas (the "POPEYES Famous Fried Chicken System"), the distinguishing characteristics of which include, without limitation, the name POPEYES Famous Fried Chicken; a unique confidential spice and batter formula used in the preparation of POPEYES Famous Fried Chicken; other confidential food formulas and recipes used in the preparation of other food products; specialized menus; specially designed buildings, interior and exterior layouts, unique trade dress and other identification schemes ("Indicia of Origin"); standards and specifications for equipment, equipment

layouts, products, operating procedures, and management programs, all of which may be changed, improved, and further developed from time to time:

WHEREAS, Franchisor is the owner of the entire right, title and interest in and to the federally registered mark "POPEYES" for restaurant, services, fried chicken, and other related food products and other Indicia of Origin ("Proprietary Marks"), all of which Franchisor has adopted and used to identify the POPEYES Famous Fried Chicken System and continues to develop, use and control the usage of for the benefit and exclusive use of itself and its franchisees in order to identify the POPEYES Famous Fried Chicken System for the public and represent its high standards of quality and services;

WHEREAS, Franchisee wishes to be assisted, trained and licensed by Franchisor as a POPEYES Famous Fried Chicken franchisee and licensed to use in connection therewith the POPEYES Famous Fried Chicken System;

WHEREAS, Franchisee understands the importance to the POPEYES Famous Fried Chicken System of POPEYES high and uniform standards of quality, cleanliness, appearance and service and the necessity of opening and operating Franchisee's POPEYES Famous Fried Chicken franchise in conformity with the POPEYES Famous Fried Chicken System;

NOW THEREFORE, the parties hereto agree as follows:

I.

APPOINTMENT

A. Franchisor hereby grants to Franchisee a franchise to operate a POPEYES Famous Fried Chicken franchise at the location described as *3130 ROCHESTER ROAD, TROY, MICHIGAN*, upon the terms and conditions herein con-

tained and subject to the terms and conditions in an option agreement between Franchisor and Franchisee, dated *May 18, 1978,* which are incorporated herein by reference, and a license to use in connection therewith, Franchisor's Proprietary Marks and the POPEYES Famous Fried Chicken System.

B. During the term of this Franchise Agreement, in addition to the exclusive territory, if any, granted to Franchisee in said option agreement between Franchisor and Franchisee, Franchisor shall not establish, or license others to establish, a POPEYES Famous Fried Chicken restaurant within a circular area having the franchised location granted herein, as its center and having such radius as is necessary to encompass a population of 25,000 (as described in Attachment I hereto) or a radius of one mile, whichever area is smaller, without Franchisee's prior written consent.

II.

DURATION

A. Except as otherwise provided in this Franchise Agreement, the term of this Franchise Agreement shall be for a period of twenty (20) years, which period shall commence from the date of commencement of operation of the POPEYES Famous Fried Chicken franchise granted herein,

B. Franchisee may, at its option, renew this franchise for one (1) additional period of ten (10) years, provided that at the time of renewal:

1. Franchisee gives Franchisor written notice of such election to renew not less than twelve (12) months or more than eighteen (18) months prior to the end of the primary term;

2. Franchisee executes and is obligated to perform under Franchisor's then current standard form of franchise agreement, which may include, without limitation, a higher royalty fee, a higher advertising contribution and a smaller area of geographic exclusivity, if any, than that contained in this Franchise Agreement;

3. Franchisee executes a general release, under seal, of any and all claims against Franchisor;

4. Franchisee is not in default of any provision of this Franchise Agreement, and any amendment hereof or successor hereto, and has fully and faithfully performed all of his obligations throughout the term of this Franchise Agreement;

5. Franchisee has satisfied all monetary obligations owed by Franchisee to Franchisor and its subsidiaries and affiliates and to any Financial Institution, Lender or other entity to whom Franchisor deems himself liable in whole or inpart as Guarantor, Surety or otherwise, and has timely met these obligations throughout the term of this Franchise Agreement;

6. Franchisee agrees to remodel and modernize the franchise unit, including without limitation, interior and exterior design, signs, equipment, furnishing and decor, so as to conform with Franchisor's then current Indicia of Origin, and the standards and specifications for the POPEYES Famous Fried Chicken System, as contained in the then current fran-

chise agreement Confidential Operating Manual, and otherwise in writing;

7. Franchisee shall have paid to Franchisor a renewal fee of fifty percent (50%) of the then current initial franchise fee.

III.

FEES

A. In consideration of the franchise and license granted to Franchisee herein, and the training, assistance and services which have been and will be received by Franchisee, Franchisee shall pay to Franchisor the following:

1. Upon the execution hereof by Franchisee, an initial franchise fee of Twenty Thousand and no/100 Dollars ($20,000). Said initial franchise fee shall be fully earned by Franchisor upon execution of this Franchise Agreement by Franchisee. If an option fee was paid for the franchise granted herein, such fee shall be credited to the initial franchise fee provided for in this Paragraph;

2. During the term of this Franchise Agreement, a recurring, non-refundable royalty fee to be paid on a weekly basis (or such other basis as may be set forth in the Confidential Operating Manual or otherwise in writing) of five percent (5%) of the gross sales for the preceding week (or such other time period as may be set forth in the Confidential Operating Manual or otherwise in writing).

B. In addition to the payments provided for in Paragraph III.A. of this Franchise Agreement, Franchisee,

recognizing the value of advertising and the importance of the standardization of advertising and promotion to the goodwill and public image of the POPEYES Famous Fried Chicken System, agrees to pay to The POPEYES Famous Fried Chicken Advertising Fund a recurring, non-refundable advertising fund contribution to be paid on a weekly basis, (or such other time period as may be set forth in the Confidential Operating Manual or otherwise in writing) of three percent (3%) of the gross sales for the preceeding week (or such other time period as may be set forth in the Confidential Operating Manual or otherwise in writing), which sum shall be expended by the POPEYES Famous Fried Chicken Advertising Fund ("Advertising Fund"), administered for national, regional and local advertising and promotional materials for the POPEYES Famous Fried Chicken System. All reasonable costs incurred by Franchisor or charged to Franchisor by third parties for the production and dissemination of such advertising and promotional materials may be charged to the Advertising Fund. In addition, any costs associated with licensing of the name POPEYES and the characters associated therewith may be charged to The Advertising Fund. The Administrator upon request shall provide Franchisee with an annual accounting of receipts and disbursements of the Fund. There shall be no requirement that all or any part of the Fund be disbursed within any accounting period. Selection of media and locale for media placement shall be at the sole discretion of the Administrator of The Fund. Franchisee understands that such advertising is intended to maximize the public's awareness of POPEYES Famous Fried Chicken restaurants, and that Franchisor accordingly undertakes no obligation to insure that any individual franchisee benefits directly or on a pro rata basis from the placement, if any, of such advertising in his local market.

C. If any monetary obligations owed by Franchisee to Franchisor and its subsidiaries and affiliates are more than seven (7) days overdue (as provided for in the Confidential Operating Manual or otherwise in writing), Franchisee shall, in addition to the obligation, pay to Franchisor a sum equal to one and one-half percent (1½%) of the overdue balance per month, or the highest rate permitted by law, whichever is less.

D. As used herein, "gross sales" shall mean all sales or other income arising from the business franchised herein, less sales tax.

E. Franchisee shall submit the fees provided for in Paragraph III in the manner and at the time prescribed in the Confidential Operating Manual or otherwise in writing.

IV.

ACCOUNTING AND RECORDS

A. Franchisee shall record all sales on a cash register equipped with tapes and utilizing a locked-in grand total mechanism, or any such other equipment as Franchisor may authorize.

B. Franchisee agrees to maintain, during the term of this Franchise Agreement, complete and accurate books, records and accounts in the manner prescribed in the Confidential Operating Manual or otherwise in writing.

C. Franchisee shall submit to Franchisor such forms, reports and records as specified and at the time specified in the Confidential Operating Manual or otherwise in writing.

D. Franchisee shall preserve all books, records, accounts, and tapes for a period of three years, or for

such other time period as may be prescribed in the Confidential Operating Manual or otherwise in writing. Franchisor may reconstruct records from available data in accordance with generally accepted accounting principles and techniques.

E. Franchisor may inspect or may appoint a representative to inspect Franchisee's books, records and accounts at any reasonable time or place (including Franchisee's principal place of business). If such inspection reveals that the gross sales reported by Franchisee to Franchisor are less than the gross sales ascertained by such inspection, then Franchisee shall immediately pay to Franchisor the amount owing to Franchisor, in accordance with the correct gross sales report. Upon discovery of an understatement in the report of gross sales of two percent (2%) or more, Franchisee shall reimburse Franchisor for any and all expenses connected with such inspection, including but not limited to, reasonable accounting and legal fees, as well as interest on the unreported sales at the highest rate permitted by law from the date said payment was due. Such payments shall be without prejudice to any other remedies Franchisor may have under this Franchise Agreement.

V.

PROPRIETARY MARKS

A. It is understood and agreed that this license to use Franchisor's Proprietary Marks applies only to their use in connection with the operation of the franchise licensed in this Franchise Agreement at the location designated herein, and includes only such Proprietary Marks as are now designated as a part of (and which may hereafter be designated in the Confidential Operating Manual or otherwise in writing as part of) the POPEYES

Famous Fried Chicken System, and no other Proprietary Marks of Franchisor now existing or to be developed or acquired by Franchisor.

B. Franchisee expressly acknowledges Franchisor's exclusive right to use the federally registered mark POP-EYES for restaurant services, fried chicken, and other related food products and the other Proprietory Marks, and agrees not to represent in any manner that he has any ownership in Franchisor's Proprietary Marks. Franchisee further agrees that his use of the Proprietary Marks shall not create in his favor any right, title or interest in or to Franchisor's Proprietary Marks, but that all of such use shall inure to the benefit of Franchisor.

C. Franchisee acknowledges that the use of the Proprietary Marks outside the scope of this license, without Franchisor's prior written consent, is an infringement of Franchisor's exclusive right to use the Proprietary Marks, and expressly covenants that during the term of this franchise and after the expiration or termination hereof, that Franchisee shall not, directly or indirectly, commit an act of infringement or contest or aid in contesting the validity or ownership of Franchisor's Proprietary Marks, or take any other action in derogation thereof.

D. Franchisee shall promptly notify Franchisor of any claim, demand, or cause of action based upon or arising from any attempt by any other person, firm or corporation to use the Proprietary Marks licensed hereunder, or any colorable variation thereof, in which Franchisor has or claims a proprietary interest. Franchisee also agrees to notify Franchisor promptly of any litigation instituted by any person, firm, corporation or governmental agency against Franchisor or Franchisee involving Franchisor's Proprietary Marks. Franchisee acknowledges that Franchisor has the right to control any administrative

proceeding or litigation involving the Proprietary Marks. In the event Franchisor undertakes the defense or prosecution of any litigation relating to the Proprietary Marks, Franchisee agrees to execute any and all documents and to do such acts and things as may, in the opinion of counsel for Franchisor, be necessary to carry out such defense or prosecution.

E. Franchisee understands and agrees that its license under said Proprietary Marks is nonexclusive to the extent that Franchisor has and retains the right under this Franchise Agreement:

1. To grant other licenses for the Proprietary Marks, in addition to those licenses already granted to existing franchisees, outside of Franchisee's exclusive territory;

2. To develop and establish other franchise systems for the same, similar, or different products or services utilizing Proprietary Marks not now or hereafter designated as part of the system licensed by this Franchise Agreement, and to grant licenses thereto, without providing Franchisee any right therein;

3. To develop and establish other systems for the sale, at wholesale or retail, of the same, similar, or different products utilizing the same or similar Proprietary Marks, without providing Franchisee any right therein.

F. Franchisee acknowledges and expressly agrees that any and all goodwill associated with the POPEYES Famous Fried Chicken System and identified by the Proprietary Marks used in connection therewith shall inure directly and exclusively to the benefit of Franchisor and

is the property of Franchisor, and that upon the expiration or termination of this Franchise Agreement, no monetary amount shall be assigned as attributable to any goodwill associated with any of Franchisee's activities in the operation of the franchise granted herein, or Franchisee's use of the Proprietary Marks.

G. Franchisee shall not use any Proprietary Marks of Franchisor as part of Franchisee's corporate or other business name, nor shall Franchisee hold out or otherwise employ the Proprietary Marks to perform any activity, or to incur any obligation or indebtedness in such a manner as might, in any way, make Franchisor liable therefor, without Franchisor's prior written consent.

H. Franchisee understands and acknowledges that each and every detail of the POPEYES Famous Fried Chicken System is important to Franchisee, Franchisor and other franchisees in order to develop and maintain high and uniform standards of quality and service, and hence to protect the reputation and goodwill of POPEYES Famous Fried Chicken restaurants. Franchisee accordingly covenants:

1. To operate and advertise under the name "POPEYES Famous Fried Chicken", without prefix or suffix;

2. To adopt and use the Proprietary Marks licensed hereunder solely in the manner prescribed by Franchisor;

3. To observe such reasonable requirements with respect to trademark registration notices as Franchisor may from time to time direct in the Confidential Operating Manual or otherwise in writing;

4. To use, promote and offer for sale only those products and services which are authorized by the Franchisor and meet the standards or specifications prescribed by Franchisor, as those standards or specifications may be disseminated from time to time in the Confidential Operating Manual or otherwise in writing.

I. In order to preserve the validity and integrity of the Proprietary Marks licensed herein and to assure that Franchisee is propely employing the same in the operation of Franchisee's business, Franchisor or its agents shall at all reasonable times have the right to inspect Franchisee's operations, premises and Franchise and make periodic evaluations of the services provided and the products sold and used therein. Franchisee shall cooperate with Franchisor's representative in such inspections and render such assistance to him as he may reasonably request.

VI.

CONFIDENTIAL OPERATING MANUAL

A. In order to protect the reputation and goodwill of the POPEYES Famous Fried Chicken System and to maintain uniform standards of operation under Franchisor's Proprietary Marks, Franchisee shall conduct his business in accordance with the Franchisor's Confidential Operating Manual, a copy of which shall be supplied to Franchisee.

B. Franchisee shall at all times treat the Manual, any other Manuals created for or approved for use in the operation of the franchise granted herein, and the information contained therein as confidential, and shall use all reasonable efforts to maintain such information

secret and confidential. Franchisee shall not at any time, without Franchisor's prior written consent, copy, duplicate, record or otherwise reproduce the foregoing, in whole or in part, nor otherwise make the same available to any unauthorized person or source.

C. The Confidential Operating Manual shall at all times remain the sole property of Franchisor.

D. In order that Franchisee may benefit from new knowledge gained by Franchisor as to improved techniques in the operation of the POPEYES Famous Fried Chicken System, Franchisor may from time to time revise the content of said Manual.

E. Franchisee shall at all times insure that its copy of said Manual is kept current and up-to-date, and in the event of any dispute as to the contents of Franchisee's Manual, the terms of the master copy of the Confidential Operating Manual, maintained by Franchisor at Franchisor's home office, shall be controlling.

VII.

DUTIES OF THE FRANCHISOR

A. Franchisor shall make available to Franchisee, or Franchisee's manager, and two of Franchisee's designated employees Franchisor's training program at a location designated by Franchisor. Franchisee and his two employees shall attend and complete the training program to Franchisor's satisfaction or shall otherwise be determined by Franchisor to be qualified to operate the franchise prior to commencing business. The cost of the training (instruction and required materials) shall be borne by Franchisor. All other expenses during the training period, including costs of accommodations, wages and travel, shall be borne by Franchisee.

B. Franchisor may make available to Franchisee or Franchisee's employees from time to time such additional training programs as Franchisor, in its sole discretion, may choose to conduct. Attendance at said training programs may be mandatory. The cost of the training (instruction and required materials) shall be borne by the Franchisor. All other expenses during the training period, including costs of accommodations, wages and travel, shall be borne by Franchisee.

C. Franchisor may make available such continuing advisory assistance in the operation of the franchise, rendered in person or by bulletins made available from time to time to all franchisees, as Franchisor may deem appropriate.

D. Franchisor at its sole discretion shall provide opening assistance to Franchisee at the franchise premises, for so long and to the extent necessary to accomplish an effective opening.

E. Franchisor shall make available standard plans and specifications to be utilized in the construction of a POPEYES Famous Fried Chicken restaurant. Franchisor shall provide assistance in planning and coordinating the remodeling or renovation of existing units. No modifications of deviations from the standard plans and specifications may be made without the written consent of Franchisor. Franchisee shall obtain, at his own expense, such further qualified architectural and engineering services as may be required to adapt the standard plans and specifications to applicable local or state laws, regulations, or ordinances. Franchisee shall bear the cost of preparing plans containing deviations or modifications from the standard plans.

F. Franchisor shall provide one copy of the Confidential Operating Manual to Franchisee, which contains the

standards, specifications, procedures and techniques of the POPEYES Famous Fried Chicken System, and may revise from time to time the contents of the Manual to incorporate new developments regarding standards, specifications, procedures, and techniques.

G. Franchisor shall provide advertising and promotional programs through the administrator of the POPEYES Famous Fried Chicken Advertising Fund.

H. Franchisor shall continue its efforts to maintain high and uniform standards of quality, cleanliness, appearance and services at all POPEYES Famous Fried Chicken restaurants, thus protecting and enhancing the reputation of POPEYES Famous Fried Chicken and the demand for the products and services of the POPEYES Famous Fried Chicken System, and, to that end, shall establish uniform criteria for approving suppliers, shall make every reasonable effort to disseminate its standards and specifications to prospective suppliers of the Franchisee upon the written request of the Franchisee, except that Franchisor may elect not to make available to prospective suppliers the standards and specifications for such food formulas deemed confidential; and shall conduct periodic inspections of the premises and periodic evaluations of the products used and sold in the franchise granted herein and in all other POPEYES Famous Fried Chicken restaurants.

I. Franchisor shall not, by virtue of any approvals or advice provided to the Franchisee, assume responsibility or liability to Franchisee or any third parties to which it would not otherwise be subject, and Franchisor makes no representations, warranties or guarantees thereby, express or implied, as to the potential volume, profits or success of a POPEYES Famous Fried Chicken franchise constructed or operated at an approved location.

VIII.

DUTIES OF THE FRANCHISEE

The Franchisee understands and acknowledges that every detail of the POPEYES Famous Fried Chicken System is important to Franchisor, to Franchisee, and other franchisees in order to develop and maintain high and uniform operating standards, to increase the demand for POPEYES Famous Fried Chicken products and services and to protect the reputation and goodwill of Franchisor. Franchisee accordingly agrees:

A. To maintain at all times during the term of this Franchise Agreement, at Franchisee's expense, the premises of the franchise, and all fixtures, furnishings, signs and equipment (hereinafter "improvements") thereon in conformity with Franchisor's high standards and public image, and in connection therewith, to make such additions, alterations, repairs and replacements thereto (but no others, without Franchisor's prior written consent) as may be required:

1. To keep the POPEYES Famous Fried Chicken franchise in the highest degree of sanitation and repair, including, without limitation, such periodic repainting, repairs to impaired equipment and replacement of obsolete signs, as Franchisor may reasonably direct;

2. To meet and maintain the highest governmental standards and ratings applicable to the operation of the franchise;

3. To refurbish the franchise upon Franchisor's request, but no more often than once every eight (8) years, to conform the Indicia of Origin to be consistent with Franchisor's then current public image, including, without lim-

itation, such extensive structural changes, remodeling, and redecoration, and such modifications to existing improvements as may be necessary to do so.

B. To operate the franchise in conformity with such uniform methods, standards and specifications as Franchisor may from time to time prescribe in the Confidential Operating Manual or otherwise in writing to insure that the highest degree of quality and service is uniformly maintained; to refrain from any deviation therefrom and from otherwise operating in any manner which reflects adversely on Franchisor's name and goodwill or on the Proprietary Marks associated with the POPEYES Famous Fried Chicken System, and in connection therewith:

1. To maintain in sufficient supply, and use at all times, only such ingredients, products, materials supplies and paper goods as conform with Franchisor's standards and specifications, and to refrain from deviating therefrom by using nonconforming items, without Franchisor's prior written consent;

2. To sell or offer for sale only such products and menu items as meet Franchisor's uniform standards of quality and quantity, as have been expressly approved for sale in writing by Franchisor, and as have been prepared in accordance with Franchisor's methods and techniques for product preparation; to sell or offer to sell all approved items; to refrain from any deviation from Franchisor's standards and specifications for serving or selling the same, without Franchisor's prior written consent; and to discontinue selling or

offering for sale such items as Franchisor may, in its discretion, disapprove in writing at any time;

3. To permit Franchisor or its agents, at any reasonable time, to remove from the franchise premises, at Franchisor's option, certain samples of any ingredients, products, materials, supplies and paper goods used in the operation of the franchise, without payment therefor, in amounts reasonably necessary for testing by Franchisor or an independent, certified laboratory, to determine whether said samples meet Franchisor's then current standards and specifications. In addition to any other remedies it may have under this Franchise Agreement, Franchisor may require Franchisee to bear the cost of such testing if the supplier has not been approved by Franchisor or if the sample fails to conform to Franchisor's specifications;

4. To purchase and install, at Franchisee's expense, all improvements specified in the approved standard site layout and plan, and such others as Franchisor may reasonably direct from time to time in the Confidential Operating Manual or otherwise in writing; and to refrain from installing or permitting to be installed on or about the franchise premises, without Franchisor's prior written consent, any improvements not previously approved as meeting Franchisor's standards and specifications;

5. To permit Franchisor or its representative, without notice, to enter upon the franchise

premises without liability for trespass or other tort, and at Franchisor's option, to remove, replace, repair and/or remodel, at Franchisee's expense, any items which do not conform with Franchisor's then current standards and specifications after Franchisee's delay or refusal upon request promptly to do so; to make such other modifications or alterations as may be necessary to achieve such conformity; and to bill Franchisee for all costs and expenses reasonably incurred in doing so.

C. To purchase all ingredients, products, materials, supplies, paper goods and improvements required for the operation of the franchise solely from suppliers who demonstrate, to the continuing reasonable satisfaction of Franchisor, the ability to meet Franchisor's reasonable standards and specifications for such items; who possess adequate quality controls and capacity to supply Franchisee's needs promptly and reliably; and who have been approved in writing by Franchisor and not thereafter disapproved. If Franchisee desires to purchase any items from an unapproved supplier, Franchisee shall submit to Franchisor a written request for such approval, or shall request the supplier itself to do so. Franchisor shall have the right to require, as a condition of its approval, that its representatives be permitted to inspect the supplier's facilities, and that samples from the supplier be delivered, at Franchisor's option, either to Franchisor or to an independent, certified laboratory designated by Franchisor for testing prior to granting approval. A charge not to exceed the reasonable cost of the inspection and the actual cost of the test shall be paid by the supplier. Franchisor reserves the right, at its option, to reinspect the facilities and products of any such

approved supplier and to revoke its approval upon its failure to continue to meet any of the foregoing criteria.

D. Except as otherwise approved in writing by Franchisor, during the term of this Franchise Agreement, to devote, or have his designated manager devote, full time, energy and best efforts to the management and operation of the franchise granted herein.

E. To require all its employees, as a condition of their employment, to execute an employment agreement, as provided in the Confidential Operating Manual or otherwise in writing, prohibiting them, during the term of their employment or thereafter, from communicating divulging or using for the benefit of any person, persons, partnership, association, or corporation any confidential information, knowledge or know-how concerning the methods of operation of the business franchised hereunder which may be acquired during the term of their employment with Franchisee.

F. To attend, or require Franchisee's designated manager to attend, and require two of Franchisee's designated employees to attend, and successfully complete Franchisor's training program to Franchisor's satisfaction or otherwise be determined by Franchisor to be qualified to operate the franchise, prior to commencing operation of the franchise.

G. If Franchisee operates three or more POPEYES Famous Fried Chicken franchises, to employ a supervisor, who shall meet such standards as may reasonably be imposed by Franchisor in the Confidential Operating Manual or otherwise in writing, for every three stores operated by Franchisee to supervise and coordinate the operation of the franchises. Such supervisor shall be employed upon the commencement of operation of every third franchise unit or multiple thereof.

H. To submit (through the mail, return receipt requested) to Franchisor for its approval prior to use, samples of all promotional and advertising materials to be used by Franchisee that have not been prepared or previously approved by Franchisor. In the event written disapproval of any such materials is not received by Franchisee within thirty (30) days from the date the materials are submitted to Franchisor, said materials shall be deemed approved.

I. To comply with all other requirements set forth in this Franchise Agreement.

IX.

INSURANCE

A. Franchisee shall procure no later than fifteen (15) days before the date on which construction is to begin on the POPEYES Famous Fried Chicken franchise or fifteen (15) days prior to the commencement of operation of the franchise for a building already constructed, and maintain in full force and effect during the entire term of this Franchise Agreement, at the Franchisee's expense, an insurance policy or policies protecting the Franchisee and Franchisor, and their officers, directors, partners and employees against any loss, liability or expense whatsoever from fire, lightning, personal injury, theft, death, malicious mischief, property damage, products liability or otherwise, arising or occurring upon or in connection with the POPEYES Famous Fried Chicken franchise, or by reason of the construction, operation or occupancy of the POPEYES Famous Fried Chicken franchise unit. Franchisor shall be an additional named insured in such policy or policies (statutory policies excepted).

B. Such policy or policies shall be written by an insurance company acceptable to Franchisor, as provided

for in the Confidential Operating Manual, and shall include minimum coverage as set forth in the Confidential Operating Manual or otherwise in writing. Additional coverage and higher policy limits may reasonably be specified for all franchises from time to time by Franchisor in the Confidential Operating Manual or otherwise in writing.

C. Evidence of insurance issued by the insurance company showing compliance with the foregoing requirements shall be furnished by Franchisee to Franchisor no later than the date insurance is to be procured in accordance with Paragraph IX.A. of this Franchise Agreement and annually thereafter. The evidence of insurance shall include a statement that the policy or policies may not be cancelled or altered without at least thirty (30) days prior written notice to Franchisor.

D. Maintenance of insurance and the performance by Franchisee of the obligations under this Paragraph IX shall not relieve the Franchisee of liability under the indemnity provisions set forth in Paragraph XVI.B. of this Franchise Agreement.

E. Should Franchisee, for any reason, not procure and maintain the insurance coverage required by this Franchise Agreement and the Confidential Operating Manual, then Franchisor shall have the right and authority (without, however, any obligation to do so) immediately to procure such insurance coverage and charge same to Franchisee, which charges, together with the fee of One Hundred Dollars ($100.00) for expenses incurred by Franchisor in connection with such procurement, shall be payable by Franchisee immediately upon notice.

X.

CONFIDENTIAL INFORMATION

Franchisee shall not during the term of this Franchise Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, association or corporation any confidential information, knowledge, or know-how concerning the construction and methods of operation of the business franchised hereunder which may be communicated to Franchisee, or of which Franchisee may be apprised, by virtue of Franchisee's operation under the terms of this Franchise Agreement. Franchisee shall divulge such confidential information only to such employees as must have access to it in order to operate the franchise granted herein. Any and all information, knowledge and know-how, including, without limitation, drawings, materials, equipment, recipes, and other data, which Franchisor designates as confidential shall be deemed confidential for purposes of this Franchise Agreement, except information which Franchisee can demonstrate came to its attention prior to disclosure thereof by Franchisor; or which, at the time of disclosure by Franchisor to Franchisee, has become a part of the public domain, through publication or communication by others; or which, after disclosure to Franchisee by Franchisor, becomes a part of the public domain, through publication or communication by others.

XI.

IN-TERM COVENANTS

Franchisee covenants that, except as otherwise approved in writing by Franchisor, during the term of this Franchise Agreement, Franchisee (who, unless otherwise specified, shall include for purposes of this Para-

graph XI collectively and individually, all officers, directors and holders of a beneficial interest of five percent (5%) or more of the securities with voting rights of Franchisee and of any corporation, directly or indirectly, controlling Franchisee, if Franchisee is a corporation, and the general partners and any limited partner, including any corporation and the officers, directors and holders of a beneficial interest of five percent (5%) or more of securities with voting rights, of a corporation which controls, directly or indirectly any general or limited partner, if Franchisee is a partnership) shall not, either directly or indirectly, for himself or through, on behalf of, or in conjunction with any person, persons, partnership, or corporation:

1. Divert or attempt to divert any business or any customer of the business franchised hereunder to any competitor by direct or indirect inducements or otherwise;

2. Employ or seek to employ any person who is at that time employed by Franchisor or by any other POPEYES Famous Fried Chicken franchisee, or to otherwise, directly or indirectly, induce such person to leave his or her employment thereat;

3. Own, maintain, engage in, or have a controlling interest in any business offering the same or similar products or services as offered by Franchisee under this Franchise Agreement within a radius of five (5) miles of the location granted herein or within a radius of five (5) miles of any POPEYES Famous Fried Chicken restaurant; provided however, that this provision shall not apply to the operation by Franchisor of any POPEYES

Famous Fried Chicken franchise which may be granted by Franchisor to Franchisee.

XII.

TRANSFERABILITY OF INTEREST

A. This Agreement shall inure to the benefit of the successors and assigns of Franchisor. Franchisor shall have the right to transfer or assign its interest in this Franchise Agreement to any person, persons, partnership, association or corporation. If Franchisor's assignee assumes all obligations of Franchisor hereunder, and sends written notice of the assignment so attesting, Franchisee agrees promptly to execute a release of Franchisor, except for any known liabilities incurred by Franchisor prior to the date of such notice, and Franchisor shall not thereafter be under any further obligation under this Franchise Agreement.

B. Franchisee understands and acknowledges that the rights and duties set forth in this Franchise Agreement are personal to Franchisee, and that Franchisor has granted this franchise in reliance on Franchisee's business skill and financial capacity. Franchisee shall not, without Franchisor's prior written consent, sell, assign, transfer, convey, give away, pledge, mortgage, or otherwise encumber any interest in this Franchise Agreement, or any interest in Franchisee, nor offer, permit or suffer the same. Unless otherwise specified, the term Franchisee as used in this section, shall include collectively and individually, all officers, directors, and holders of a beneficial interest of five percent (5%) or more of the securities with voting rights of Franchisee, and of any corporation directly or indirectly controlling Franchisee, if Franchisee is a corporation, and the general partners and any limited partner (including any corpora-

tion and the officers, directors and holders of a beneficial interest of five percent (5%) or more of securities with voting rights, or a corporation which controls, directly or indirectly any general or limited partner), if Franchisee is a partnership. Any purported assignment or transfer, by operation of law or otherwise, not having the written consent of Franchisor shall be null and void and shall constitute a default which is good cause for immediate termination of this Franchise Agreement.

C. Franchisor shall not unreasonably withhold its consent to any transfer referred to in Paragraph XII.B. of this Franchise Agreement for the remainder of the term hereof, when requested; provided, however, that prior to the time of transfer:

1. All of Franchisee's accrued monetary obligations to Franchisor and its subsidiaries and affiliates and to any Financial institution, lender or other entity to whom Franchisor deems himself liable in whole or in part as a Guarantor, Surety or otherwise shall have been satisfied;

2. Franchisee shall have:

   a. Executed a general release under seal, in a form satisfactory to Franchisor, of any and all claims against Franchisor;

   b. Agreed to remain obligated under the covenants contained in Paragraphs X and XIV of this Franchise Agreement as if this Franchise Agreement had been terminated on the date of the transfer;

   c. Executed a written agreement, under seal, in a form satisfactory to Franchisor, in which Franchisee covenants to remain

primarily liable under this Franchise Agreement and to waive notice of demand, presentment, protest and dishonor, which liability shall not be affected by any extension of time, credit or other indulgence granted to any transferee Franchisee.

3. The transferee Franchisee shall have:

   a. Met Franchisor's then current criteria for new franchisees;

   b. Executed a written assignment, under seal, in a form satisfactory to Franchisor, pursuant to which the transferee Franchisee shall assume all of the obligations of the individual or entity which is the transferor Franchisee under this Franchise Agreement.

4. A transfer fee not to exceed Two Thousand Dollars ($2,000.00) shall have been paid in full to Franchisor to cover Franchisor's administrative expenses in connection with the transfer, but no initial franchise fee or other fee shall be charged by Franchisor for a transfer. If the transferee Franchisee is a corporation formed by Franchisee for the convenience of ownership, no transfer fee shall be required.

5. Franchisee and the transferee Franchisee shall have met all of the applicable additional requirements set forth in the remainder of this Paragraph XII.

D. If a transfer, alone or together with other related previous, simultaneous, or proposed transfers, would

have the effect of transfering control of the business franchised hereinto a transferee Franchisee, Franchisor's consent to the transfer shall be conditioned on the following requirements:

1. The transferee Franchisee shall be of good moral character and reputation in the judgment of Franchisor.

2. The transferee Franchisee shall have demonstrated to Franchisor's satisfaction, by meeting with Franchisor or otherwise, at Franchisor's option, that the transferee Franchisee's qualifications meet Franchisor's then current criteria for a new franchisee. For the purposes of determining whether the conditions herein have been met, the persons and entities included in the term Franchisee as defined for use in this Paragraph XII, shall be considered collectively;

3. The transferee Franchisee shall execute the then current standard form of Franchise Agreement (and such other then current ancillary agreements as Franchisor may reasonably require) which shall expire on the date of expiration of this Franchise Agreement;

4. The transferee Franchisee and such other individuals as shall be designated by Franchisor in the Confidential Operating Manual or otherwise in writing shall have successfully completed the training course then in effect for franchises;

5. The other requirements of paragraph XII.C. of this Franchise Agreement shall have been met;

6. If the transferee Franchisee is a corporation:

   a. The corporate transferee Franchisee shall promptly furnish Franchisor on a regular basis with certified copies of such corporate records material to the franchised business as Franchisor may require from time to time in the Confidential Operating Manual or otherwise in writing:

   b. Each stock certificate of the corporate transferee Franchisee representing each share of stock the transfer of which is restricted by this Franchise Agreement, shall have conspicuously endorsed upon it a statement that it is held subject to all restrictions imposed upon assignments in this Franchise Agreement.

7. If the transferee Franchise is a partnership, the partnership agreement shall provide that further assignments or transfer of any interest in the partnership is subject to all restrictions imposed upon assignments in this Franchise Agreement.

E. In the event of the death or permanent incapacity of any individual who controls Franchisee, directly or indirectly, Franchisor shall not unreasonably withhold its consent to a transfer to any person, persons, partnership or corporation designated by his legal representative, provided, however, that:

1. The requirements of Paragraph XII.C. and XII.D. of this Franchise Agreement shall have been met;

2. The proposed transfer is applied for in writing within two (2) months of the date of death or permanent incapacity by the legal representative of such individual, and is effected within six (6) months thereafter;

3. In the case of permanent incapacity, the legal representative shall have furnished a certificate of a physician designated by Franchisor that Franchisee has been or will be unable to operate the franchise for a period of six (6) months or longer.

F. Franchisor's consent to a transfer of this franchise shall not constitute a waiver of any claims it may have against the transferor Franchisee, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Franchise Agreement by the transferee Franchisee.

G. If Franchisee has received and desires to accept a signed, bona fide offer from any third party to purchase Franchisee or any interest in Franchisee, Franchisee shall notify Franchisor in writing of each such offer, and Franchisor shall have the right and option, exercisable within thirty (30) days after actual receipt of such written notification or receipt of evidence of merchantable title, whichever is later, to give notice to Franchisee that Franchisor intends to purchase Franchisee's franchise or interest therein on the same terms and conditions offered by the third party, and closing shall be within sixty (60) days of Franchisor's notice of the exercise of its option. (Franchisee shall provide Franchisor with such verification of the terms of the offer as Franchisor may require). Should Franchisor fail to exercise this option and the terms of the offer go unaccepted and thereafter be altered, or should the transaction not

be consummated and closed within one (1) month with the same third party, Franchisor shall, in each instance, be notified in writing of terms of the offer and shall again have thirty (30) days from the date of actual receipt thereof, or from receipt of evidence of merchantable title, whichever is later, to notify Franchisee that it intends to purchase on such terms. Should Franchisor fail to exercise this option, the terms of Paragraph XII of the Franchise Agreement shall govern any transfer which may be contemplated.

XIII.

TERMINATION

A. Except as provided in Paragraph XIII.B. and C. of this Franchise Agreement, Franchisee shall have thirty (30) days after receipt from Franchisor of a written Notice to Cure within which to remedy any default hereunder. If any such default is not cured within that time, or such longer period as applicable law may require, Franchisor may, at its option, terminate this Franchise Agreement, and all rights granted hereunder effective immediately upon receipt by Franchisee of a written Notice of Termination. Franchisee shall be in deault hereunder for any failure substantially to comply with any of the requirements imposed by this Franchise Agreement, as it may from time to time reasonably be supplemented by the Confidential Operating Manual or otherwise in writing, or to carry out the terms of the Franchise Agreement in good faith, including, without limitation, any of the following events:

1. If Franchisee fails or refuses promptly to pay any monies owing to Franchisor or its subsidiaries or affiliates and to any Financial institution, lender or other entity to whom

Franchisor deems himself liable in whole or in part as a Guarantor, Surety or otherwise on date due;

2. If Franchisee fails or refuses to submit the financial information that Franchisor requires in this Franchise Agreement, or makes any false statements in connection therewith;

3. If Franchisee fails to maintain the standards that Franchisor requires in this Franchise Agreement;

4. If Franchisee, by act or omission, suffers a continued violation, in connection with the operation of the franchise, of any law, ordinance, rule or regulation of a government agency, in the absence of a good faith dispute over its application or legality and without promptly resorting to an appropriate administrative or judicial forum for resolution thereof.

B. Franchisee shall be deemed to be in default and Franchisor shall terminate this Franchise Agreement and all rights granted hereunder effective immediately without notice or opportunity to cure (except as otherwise required by law), if Franchisee shall become insolvent or make a general assignment for the benefit of creditors, or if a petition in bankruptcy is filed by Franchisee, or such a petition is filed against and consented to by Franchisee, or if Franchisee is adjudicated a bankrupt, or if a bill in equity or other proceeding for the appointment of a receiver of Franchisee or other custodian for Franchisee's business or assets is filed and consented to by Franchisee, or if a receiver or other custodian (permanent or temporary) of Franchisee's assets or property, or any part hereof, is appointed by any

court of competent jurisdiction, or if proceedings for a composition with creditors under any state or federal law should be instituted by or against Franchisee, or if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless supersedeas bond is filed), or if execution is levied against Franchisee's franchise or property, or a suit to foreclose any lien or mortgage against the premises or equipment is instituted against Franchisee and not dismissed within thirty (30) days, or if the real or personal property of Franchisee's franchise shall be sold after levy thereupon by any sheriff, marshall, or constable.

C. Franchisee shall be deemed to be in default and Franchisor may, at its option, terminate this Agreement and all rights granted hereunder effective immediately, without notice or prior opportunity to cure the default (except as otherwise required by law), upon the occurrence of any of the following events:

1. If Franchisee has received from Franchisor two (2) or more Notices to Cure pursuant to paragraph XIII.A. of this Franchise Agreement for the same, similar or different defaults in the same calendar year, in which event a Notice of Termination may be sent in lieu of any subsequent Notice to Cure;

2. If Franchisee transfers any rights or obligations arising from this Franchise Agreement to any third party without Franchisor's prior written consent, contrary to the prosciptions in Paragraph XII.B. of this Franchise Agreement.

3. If Franchisee ceases to do business at the location granted in this Franchise Agreement, or fails within thirty (30) days to remedy any

material default under any lease or sublease for the franchise premises, or loses the right to possession of the premises or otherwise forfeits the right to do or transact business in the jurisdiction where the franchise is located, provided, however that if any such loss of possession results through no fault of Franchisee, and the premises are damaged or destroyed by a disaster such that they cannot, in Franchisor's judgment, reasonably be restored, then this Franchise Agreement shall not be terminated for that reason for sixty (60) days thereafter, provided Franchisee applies within that time for the approval of Franchisor to relocate, for the remainder of the term hereof, to other premises, which approval shall not be unreasonably withheld.

XIV.

EFFECT OF TERMINATION OR EXPIRATION

A. Upon termination or expiration of this Franchise Agreement, Franchisee shall immediately cease to be a POPEYES Famous Fried Chicken franchisee and:

1. Franchisee shall immediately cease to operate the restaurant as a POPEYES Famous Fried Chicken restaurant, and shall not thereafter, directly or indirectly, represent to the public that the restaurant is a POPEYES Famous Fried Chicken restaurant, or hold itself out as a present or former franchisee of Franchisor;

2. Franchisee shall immediately cease to use, by advertising or in any manner whatsoever: any menus, recipes, confidential food for-

mulas, equipment, methods, procedures and techniques associated with the POPEYES Famous Fried Chicken System in which Franchisor has a proprietary right, title or interest, the name POPEYES Famous Fried Chicken, and any Proprietary Marks and Indicia of Origin associated with the POPEYES Famous Fried Chicken System. In particular, Franchisee shall cease to use, without limitation all signs, furniture, fixtures, equipment, advertising materials, stationery, forms and any other articles which display the Proprietary Marks of Indicia of Origin associated with the POPEYES Famous Fried Chicken System.

3. Franchisee agrees, in the event it continues to operate or subsequently begins to operate a restaurant or other business, not to use any reproduction, counterfeit, copy or colorable imitation of the Proprietary Marks in conjunction with such other business which is likely to cause confusion or mistake or to deceive, and further agrees not to utilize any trade dress or designation of origin or description or representation which falsely suggests or represents an association or connection with Franchisor, so as to constitute unfair competition. Franchisee shall make such modifications or alterations to the franchise premises immediately upon termination or expiration of the franchise herein granted as may be necessary to prevent the operation of any business thereon by himself or others in derogation of this Paragraph, and shall make

such specific additional changes thereto as Franchisor may reasonably request for that purpose.

4. Franchisee shall immediately pay all sums owing to Franchisor and its subsidiaries and affiliates. In the event of termination for any default by Franchisee, such sums shall include all damages, costs and expenses, including reasonable attorney's fees, incurred by Franchisor as a result of the default, which obligation shall give rise to and remain, until paid in full, a lien in favor of Franchisor against any and all of the personal property, equipment, and fixtures owned by Franchisee and on the franchise premises at the time of default.

5. Franchisee shall pay to Franchisor all damages, costs and expenses, including reasonable attorney's fees, incurred by Franchisor subsequent to the termination or expiration of the franchise herein granted in obtaining injunctive relief for the enforcement of any portion of this Paragraph XIV of the Franchise Agreement.

6. Franchisee shall immediately turn over to Franchisor all manuals, records, files, instructions, correspondence, and any and all other materials relating to the operation of the franchise in Franchisee's possession and all copies thereof (all of which are acknowledged to be Franchisor's property) and shall retain no copy or record of any of the foregoing, excepting only Franchisee's copy of the agreements between Franchisor and Franchisee, any corre-

spondence between the parties, and any other documents which Franchisee reasonably needs for compliance with any provision of law.

B. Franchisor shall have the right (but not the duty), to be exercised by notice of intent to do so within thirty (30) days after termination or expiration, to purchase any and all improvements, advertising material, ingredients, products, materials, supplies, paper goods and any items bearing Franchisor's Proprietary Mark at Franchisee's cost or fair market value, whichever is less. If the parties cannot agree on fair market value within a reasonable time, an independent appraiser shall be designated by Franchisor and his determination shall be binding. If Franchisor elects to exercise any option to purchase herein provided, it shall have the right to set-off all amounts due from Franchisee under this Franchise Agreement and the cost of the appraisal, if any, against any payment therefor.

C. Franchisee covenants that, except as otherwise approved in writing by the Franchisor, for a period of one (1) year after expiration or termination of this Franchise Agreement, regardless of the cause of termination, Franchisee (who, unless otherwise specified, shall include for purposes of this Paragraph XIV.C., collectively and individually, all officers, directors or holders of a beneficial interest five (5%) percent or more of the securities with voting rights of Franchisee and of any corporation directly or indirectly controlling Franchisee, if franchisee is a corporation, and the general partners and any limited partner (including any corporation and the officers, directors and holders of a beneficial interest of five (5%) percent or more of securities with voting rights of a corporation which controls, directly or indirectly, any general or limited partner), if Franchisee is a partnership, shall not for himself, or through, on behalf

of, or in conjunction with any other persons, partnership or corporation:

1. Divert or attempt to divert any business or any customer of the business franchised hereunder to any competitor by direct or indirect inducements or otherwise;

2. Employ or seek to employ any person who is at that time employed by Franchisor or by any other POPEYES Famous Fried Chicken franchisee, or to otherwise directly or indirectly induce such person to leave his or her employment htereat;

3. Own, maintain, engage in, or have a controlling interest in any business offering the same or similar products or services as offered by Franchisee under this Franchise Agreement with in a radius of five (5) miles of the location granted herein or within a radius of five (5) miles of any POPEYES Famous Fried Chicken restaurant; provided however, that this provision shall not apply to the operation by Franchisee of any POPEYES Famous Fried Chicken franchise which may be granted by Franchisor to Franchisee.

D. Franchisee shall comply with the provisions of Paragraph X of this Franchise Agreement.

XV.

TAXES, PERMITS AND INDEBTEDNESS

A. Franchisee shall promptly pay when due all taxes and all accounts and other indebtedness of every kind incurred by Franchisee in the conduct of the franchise granted under this Franchise Agreement.

B. Franchisee shall comply with all federal, state, and local laws and regulations and shall timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of the franchise granted under this Franchise Agreement.

XVI.

INDEPENDENT CONTRACTORS AND INDEMNIFICATION

A. This Franchise Agreement does not constitute Franchisee an agent, legal representative, joint venturer, partner, employee, or servant of Franchisor for any purpose whatsoever; and it is understood and agreed that Franchisee shall be an independent contractor and is in no way authorized to make any contract, agreement, warranty or representation on behalf of Franchisor, or to create any obligation, express or implied, on behalf of Franchisor. The parties further agree that this Franchise Agreement does not create a fiduciary relationship between them.

B. Under no circumstances shall Franchisor be liable for any act, omission, contract, debt or any other obligation of Franchisee. Franchisee shall indemnify and hold Franchisor harmless against any such claim and the cost (including attorney's fees) of defending against such claims arising directly or indirectly from, or as a result of, or in connection with, Franchisee's operation of the franchise.

XVII.

EFFECT OF WAIVER

No failure of Franchisor to exercise any power reserved to it in this Franchise Agreement, or to insist upon compliance by Franchisee with any obligation or condition in this Franchise Agreement, and no custom or practice

of the parties at variance with the terms hereof, shall constitute a waiver of Franchisor's right to demand exact compliance with the terms of this Franchise Agreement. Waiver by Franchisor of any particular default by Franchisee shall not affect or impair Franchisor's right in respect to any subsequent default of the same or of a different nature nor shall any delay, forbearance, or omission of Franchisor to exercise any power or rights arising out of any breach or default by Franchisee of any of the terms, provisions, or covenants of this Agreement, affect or impair Franchisor's right, nor shall such constitute a waiver by Franchisor of any rights hereunder or right to declare any subsequent breach or default. Subsequent acceptance by Franchisor of any payments due to it shall not be deemed to be a waiver by Franchisor of any preceding breach by Franchisee of any terms, covenants, or conditions of this Franchise Agreement.

XVIII.

NOTICES

Any notices required hereunder shall be in writing and shall be sent by personal delivery, or by certified or registered mail, return receipt requested, if directed to Franchisor addressed to POPEYES Famous Fried Chicken Corporation, Attention: Franchise Department, 1405 Airline Highway, Metairie, Louisiana, 70001, or to such other address as Franchisor may designate, and if directed to Franchisee, addressed to Franchisee at the address shown on the first page or the latest current address of which Franchisor has been notified. Payments required to be made hereunder shall be made by personal delivery of by mail, postage prepaid, and addressed to Franchisor as provided in this Paragraph. Notice by mail shall be deemed given and received not later than the seventh (7th) business day following the date same was deposited in the mail, duly addressed and posted.

XIX.

SEVERABILITY AND CONSTRUCTION

A. Except as expressly provided to the contrary herein, each section, part, term and/or provision of this Franchise Agreement shall be considered severable; and if, for any reason, any section, part, term and/or provision herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation of a court or agency having valid jurisdiction, such shall not impair the operation or affect the remaining portions, sections, parts, terms and/or provisions of this Franchise Agreement, and the latter will continue to be given full force and effect and bind the parties hereto; and such invalid sections, parts, terms and/or provisions shall be deemed not to be part of this Franchise Agreement.

B. Franchisee expressly agrees to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within the terms of any provision hereof, as though it were separately articulated in and made a part of this Franchise Agreement, that may result from striking from any of the provisions contained herein any portion or portions which a court may hold to be unreasonable and unenforceable in a final decision to which Franchisor is a party, or from reducing the scope of any covenant to the minimum extent required to comply with such a court order.

XX.

ENTIRE AGREEMENT

This Franchise Agreement, the documents referred to herein, the Option Agreement, if any, and the attachments attached hereto, constitute the entire, full and

complete agreement between Franchisor and Franchisee concerning the subject matter hereof, and supersede all prior agreements. No other representations have induced Franchisee to execute this Franchise Agreement, and there are no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein which are of any force or effect with reference to this Franchise Agreement or otherwise. No amendment, change or variance from this Franchise Agreement shall be binding on either party unless executed in writing.

XXI.

CAPTIONS

The captions to each paragraph herein are used for convenience only and shall not be considered part of this Franchise Agreement nor used in interpreting the provisions hereof.

XXII.

DISCLAIMER

Franchisee acknowledges that it has conducted an independent investigation of the POPEYES Famous Fried Chicken franchise and recognized that the business venture contemplated by this Franchise Agreement involves business risks and will be largely dependent upon the ability of the Franchisee as an independent businessman. Franchisor expressly disclaims the making of, and Franchisee acknowledges that is has not received, any warranty or guarantee, expressed or implied, as to the potential volume, profits or success of the business venture contemplated by this Franchise Agreement.

XXIII.

APPLICABLE LAW

A. This Franchise Agreement shall be interpreted and construed under the laws of the State of Louisiana, which laws shall prevail in the event of any conflict of laws.

B. No right or remedy herein conferred upon or reserved to Franchisor is exclusive of any other right or remedy herein or by law or equity provided or permitted; but each shall be cumulative of any other right or remedy provided in this Franchise Agreement.

XXIV.

CORPORATE FRANCHISEE

In the event the Franchisee named herein is a corporation at the time of execution of this Franchise Agreement, it is warranted, covenanted and represented to Franchisor that, if Franchisee is privately held, all of the issued and outstanding stock, or if Franchisee is publicly held, a plurality of the issued and outstanding stock sufficient to confer the power and authority to effect actual control of the corporation, is and shall be owned by and issued to the following person or persons: *WILLIAM F. GREGORY and MICHAEL C. SULLIVAN, SULLIVAN-GREGORY* ~~*CORPORATION*~~ [*INC.*], *JOINTLY and SEVERALLY* at all times during the term of this Franchise Agreement and that:

A. The above named person or persons has individually and jointly and severally executed this Franchise Agreement, and such person, or one of such persons, is and shall be the chief executive officer of the Franchisee corporation, if it is privately held, or does and shall hold such corporate office or offices as may be necessary to

maintain and exercise the actual power and authority actively to direct the affairs of the Franchisee corporation, if it is publicly held, at all times during the term of this Franchise Agreement:

B. The requirements of Paragraph V of this Franchise Agreement prohibiting the use of Franchisor's Proprietary Marks in Franchisee's corporate or other business name shall be met at all times during the term of this Franchise Agreement.

C. The requirements of Paragraph XII.D.6. of this Franchise Agreement have been and shall be met, during the term of the Agreement, as if the franchise granted herein had been transferred to the Franchise corporation by some other franchisee.

D. Franchisee is incorporated in the State of *MICHIGAN* and has its principal place of business at, ~~*7365 ORCHARD LAKE ROAD, WESTBLOOMFIELD, MICHIGAN 48003*~~ [*3130 ROCHESTER ROAD, TROY, MICHIGAN 48084*] and shall promptly notify Franchisor in writing of any change thereto during the term of this Franchise Agreement.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have duly executed, sealed and delivered this Franchise Agreement in triplicate the day and year first above-written.

POPEYES Famous Fried Chicken Corporation
BY: /s/ *ALVIN C. COPELAND,* President
/s/ *WILLIAM F. GREGORY,* Franchisee
/s/ *MICHAEL C. SULLIVAN,* Franchisee

THIS ENTIRE AGREEMENT INCLUDING CORRECTIONS, CHANGES AND ALL ATTACHMENTS AND ADDENDUMS, SHALL ONLY BE BINDING UPON POPEYES FAMOUS FRIED CHICKEN, INC. WHEN SIGNED OR INITIALED BY ITS PRESIDENT.

APPENDIX D

JOINT TRIAL EXHIBIT 184

Reference: Gregory/Sullivan March 15, 1987

The following is a breakdown by store for advertising and royalty and the weeks open.

Store No.	*Advertising*	*Interest*	*Weeks Open*
208 (Troy)	$101,518.30	$ 5,121.79	09/27/81 to 02/28/82 07/18/82 to 10/02/83 10/30/83 to 03/15/87
311 (Pontiac)	$ 82,376.06	$ 5,041.51	06/20/82 to 10/02/83 10/30/83 to 03/15/87
361 (W. Bloomfield)	$ 58,585.37	$ 3,396.57	06/27/82 to 10/02/83 10/30/83 to 03/15/87
377 (Mt. Clemens)	$ 56,200.53	$ 3,098.87	07/11/82 to 10/02/83 10/30/83 to 03/15/87
430 (Southfield)	$ 56,181.02	$ 3,445.09	02/06/83 to 07/03/83 07/17/83 to 10/02/83 10/16/83 to 03/15/87
486 (Utica)	$ 20,553.85	$ 2,220.14	12/04/83 to 11/10/85
TOTAL:	$375,415.13	$22,323.97	

Store No.	*Royalty*	*Interest*	*Weeks Open*
208	$139,139.22	$ 6,376.20	09/27/81 to 02/28/82 07/18/82 to 10/02/83 10/16/83 to 03/30/86
311	$102,687.77	$ 5,724.58	06/20/82 to 03/30/86
361	$ 75,263.70	$ 4,157.32	06/27/82 to 10/02/83 10/16/83 to 03/30/86
377	$ 74,149.40	$ 3,854.74	07/11/82 to 10/02/83 10/16/83 to 03/30/86
430	$ 70,850.32	$ 4,292.33	02/06/83 to 07/03/83 07/17/83 to 10/02/83 10/16/83 to 03/30/86
486	$ 33,936.00	$ 2,763.06	12/04/83 to 11/10/85
TOTAL:	$496,026.91	$27,168.23	

plus: Amount Due on Notes — $5,358.66
Amount Due on MDC charge — $ 127.89